

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-12825 (MBK)
	.	
LTL MANAGEMENT LLC,	.	
	.	U.S. Courthouse
Debtor.	.	402 East State Street
	.	Trenton, NJ 08608
.	
LTL MANAGEMENT LLC,	.	Adv. No. 23-01092 (MBK)
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
THOSE PARTIES LISTED ON	.	
APPENDIX A TO COMPLAINT AND	.	
JOHN AND JANE DOES 1-1000,	.	
	.	Thursday, June 29, 2023
Defendants.	.	PM SESSION
.	1:16 p.m.

TRANSCRIPT OF MOTION OF TO DISMISS THE SECOND BANKRUPTCY
PETITION OF LTL MANAGEMENT LLC

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript
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SAUL BURIAN

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1 THE COURT: All right. We are ready to proceed.

2 MR. WINOGRAD: Good afternoon, Your Honor. Michael
3 Winograd, Brown Rudnick, for TCC. Your Honor, the TCC calls
4 Saul Burian.

5 THE COURT: Good afternoon, Mr. Burian.

6 MR. BURIAN: Good afternoon, Your Honor.

7 TCC WITNESS, SAUL BURIAN, AFFIRMED

8 THE COURT: Thank you. Please have a seat. And
9 provide the Court with your name and business address.

10 THE WITNESS: Saul Elliot Burian. 245 Park Avenue,
11 New York, New York.

12 MR. WINOGRAD: Your Honor, may I approach?

13 THE COURT: Of course.

14 MR. WINOGRAD: Your Honor, I'm assuming this, I'm
15 assuming -- this is not your copy, is it?

16 THE COURT: No. We can just leave it for -- there
17 will be a return with it.

18 MR. WINOGRAD: Your Honor, I don't know if it would
19 help the Court for us to do a 30, 60, 90 to introduce Mr.
20 Burian. I know the Court already knows him, but I'll leave
21 that to Your Honor's discretion.

22 THE COURT: I'm well aware of Mr. Burian and his
23 qualifications and background.

24 MR. WINOGRAD: Okay. Thank you, Your Honor. May I
25 proceed?

Burian - Direct/Winograd

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1 THE COURT: Yes, please.

2 DIRECT EXAMINATION

3 BY MR. WINOGRAD:

4 Q Mr. Burian, I handed you a binder. Could you just open it
5 up for a minute, please?

6 A I have.

7 Q And you see that there are two reports in there?

8 A I do.

9 Q And do you know what reports those are?

10 A They look like my expert report delivered in June. And my
11 rebuttal report, delivered later in June in this case.

12 Q And are the opinions that you've expressed in there the
13 same opinions that you would have expressed had you given live
14 testimony on direct examination?

15 A They are.

16 MR. WINOGRAD: All right. Your Honor, given the
17 agreements by the parties, I'd like to move those two reports
18 into evidence. I believe they're Exhibits 876 and 1112.

19 THE COURT: Any objection?

20 MR. GORDON: No objection.

21 THE COURT: Both exhibits are accepted into evidence.
22 Thank you.

23 (Exhibits 876 and 1112 admitted into evidence)

24 MR. WINOGRAD: Thank you, Your Honor.

25 MR. TORBORG: Good afternoon, Your Honor.

Burian - Cross/Torborg

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1 THE COURT: Good afternoon.

2 MR. TORBORG: David Torborg, Jones Day, on behalf of
3 the Debtor. May I proceed with some items?

4 THE COURT: Yes, please.

5 CROSS-EXAMINATION

6 BY MR. TORBORG:

7 Q Good afternoon, Mr. Burian.

8 A Good afternoon.

9 Q I've provided you with a tab binder, with a handful of
10 documents I may use today. We'll also be showing the
11 documents, and perhaps other materials on the screen. You
12 might find it easier to follow along with the screen. But feel
13 free to use the binder. It's your choice.

14 Mr. Burian, it is your opinion that LTL 2.0 is just
15 the latest step in a single integrated transaction that began
16 with the divisional merger of Old JJCI to LTL's first
17 bankruptcy, correct?

18 A Yes.

19 Q Likewise, in the expert report you submitted in 2022, you
20 opined the division merger of Old JJCI, the 2021 Funding
21 Agreement, and the filing of the initial bankruptcy, were all a
22 part of a single, preplanned, integrated transaction. Correct?

23 A Yes. So, that was clearly all preplanned at the same time
24 as the LTL 2 was a reaction to the intervening events. So,
25 it's not the same as the first question as to whether LTL 2 was

1 part of a preplanned transaction. I believe it's part of a
2 continuation plan. I think I said in my deposition, in the
3 NBA, of trying to manufacture a bankrupt, in order to deal with
4 Talc separate from the Holdco operating assets.

5 Q Is the answer to my question, yes?

6 A The second question, the answer is yes. The first
7 question I provided an explanation.

8 Q Behind Tab 10 is your 2022 Report?

9 A I think I have it now in two different binders, so I'll
10 look. But --

11 Q This is the 2022 Report. Specifically slide seven.

12 A This is one from LTL 1, you're saying?

13 Q Yes, sir.

14 A Okay.

15 Q Okay. Are you at slide seven?

16 A I will momentarily. I am there.

17 Q You wrote beside Number 1, "The LTL transaction is a
18 single, preplanned, integrated transaction comprised of five
19 related interdependent steps." That was your opinion in 2022,
20 correct?

21 A Correct.

22 Q And if you go to pages 9 and 10 of that same document,
23 these slides show the five interdependent steps, correct?

24 A Yes.

25 Q And that includes the divisional merger, the execution of

Burian - Cross/Torborg

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1 the funding agreement, and the filing of the LTL 1.0
2 bankruptcy, correct?

3 A There were two other steps, but yes.

4 Q Thank you. When you testified at the 2022 motion to
5 dismiss hearing, at the divisional merger of Old JJCI, the 2021
6 Funding Agreement, and the filing of the initial LTL bankruptcy
7 were all interdependent steps, correct?

8 A Yes.

9 Q It was your opinion that the company would not have done
10 any one of those steps without also doing all of the other
11 steps, correct?

12 A Yes, they were a package.

13 Q And that means, in your view, that the 2021 Funding
14 Agreement would not have existed if not for the division merger
15 of Old JJCI and the LTL 1.0 bankruptcy, correct?

16 A Yes.

17 Q Mr. Burian, if you could go back to Tab 1 in the binder,
18 that is your expert report, your first expert report in this
19 matter. This matter referring to LTL 2.0.

20 A Okay.

21 Q If you forward to slide 14 for me.

22 A I am there.

23 Q Now, this slide is titled, J&J's and LTL's Financial
24 Engineering deprived claimants of access for approximately
25 \$42.5 billion dollars in value. Did I read that right?

1 A Yes.

2 Q Okay. And according to your report, Step 1 of this
3 financial engineering was to transfer the Consumer Health
4 Business, correct?

5 A Yes.

6 Q When you wrote this report, and you rendered this opinion,
7 you had no proof that the transfer of the Consumer Health
8 Business to Holdco's Parent in 2023 was in, any way, connected
9 with a plan to deprive claimants of access to value. Correct?

10 A Correct. I talked about the affect of the transfer not
11 the motivation, at the time.

12 Q Okay. So, the answer to my question is, correct. Yes,
13 right?

14 A It was yes, with an explanation. So it wouldn't be
15 misleading.

16 Q And if we go to slide 16, so two slides forward, the title
17 of this slide is also titled, J&J's LTL's Financial Engineering
18 deprived claimants of access of approximately \$42.5 billion
19 dollars in value. Did I read that right?

20 A Yes, it's the same header on the page as what you read
21 before.

22 Q And Step 2 of the alleged financial engineering is the
23 replacement of the funding agreement, correct?

24 A Correct.

25 Q When you wrote this report, and you rendered this opinion,

Burian - Cross/Torborg

11

1 you were not aware of any evidence that Step 1 and Step 2 were
2 connected. Correct?

3 A I think it's evident that it was designed at the same
4 time, and connected that way. Or that the results were
5 connected. It was the idea that the replacement of the Funding
6 Agreement, the transfer of the assets without any inter-company
7 claim or value back to Holdco is connected to the transfer of
8 the assets.

9 So, you're using the word broadly. They were connected.
10 When you say do I have evidence that someone sat down, and at
11 the time of the transfer from Holdco, knew, or thought that
12 this engineering would be necessary for LTL 2.0, my
13 understanding is, the Third Circuit hadn't ruled yet. So that
14 they were not, they may not have been preplanned. But they
15 were connected.

16 Q Mr. Burian, if you go behind Tab 2, there's a copy of your
17 transcript. And specifically if you go to page 224.

18 A Page what, sir?

19 Q 224.

20 A I am --

21 Q Line 18.

22 A -- almost there. I'm having trouble turning pages. I
23 apologize.

24 Q It's okay.

25 A 224, line 18?

Burian - Cross/Torborg

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1 Q Yes. I asked, "Okay --", bad habit of mine, "are you
2 saying that Steps 1 and Steps 2 are connected?" Answer, "I
3 told you before we had this conversation that I don't know if
4 they were connected. I hope not. But it's pretty suspicious.
5 But I don't have evidence of that, one way or the other." Is
6 that your testimony, sir?

7 A Yes, this is consistent with what I just said, which is, I
8 don't have evidence it was preplanned at the time of the
9 transfer. Clearly, however, at the time of the modification
10 and Funding Agreement, the Third Circuit decision was known,
11 and the transfer was known, and the impact on creditors was
12 known. So, in that respect it's connected in a plan to
13 deprive, potentially deprive people of value.

14 Q Mr. Burian, if you can answer my questions yes or no. I
15 just asked you, was that your testimony. All you have to do is
16 say yes. Unless I read it wrong.

17 THE COURT: Mr. Winograd?

18 MR. WINOGRAD: Your Honor, in addition to the
19 argumentativeness, I would ask for Mr. Torborg to just
20 completely read what he read from. If he just didn't stop in
21 the middle of the sentence. There's a clause right after the
22 comment that says, "But I am discussing the impact of these two
23 steps, these two activities that denied LTL and Holdco the
24 value of the Consumer Health Business, which I think is what
25 Mr. Burian just testified to.

Burian - Cross/Torborg

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1 Q Mr. Burian, directing you back to your expert report, Tab
2 1, specifically slide 3. 4, I'm sorry.

3 A Slide 4?

4 Q Yes, sir. Are you with me, sir?

5 A I am. The scope of the report?

6 Q Yes, sir. This sets forth the stated scope of your
7 report, correct?

8 A Yes.

9 Q And your report reports to address, among other things,
10 whether LTL was in financial distress the time it filed for
11 bankruptcy on April 4th, 2023. Correct?

12 A Yes.

13 Q Okay. You believe the two most obvious metrics of
14 financial distress are whether a company is insolvent, and
15 whether on a cash flow basis it can meets its' obligations.
16 Correct?

17 A In part. I think we discussed in my deposition that I
18 look at those two very important criteria, and analyze the
19 facts and circumstances of the impact on the underlying
20 business. They're not just hanging out there on their own.
21 They're most relevant.

22 Q Okay. LTL's liabilities are talc related liabilities,
23 correct?

24 A I've been told that.

25 Q Now, Mr. Burian, you do not have any experience estimating

1 the value of asbestos related personal injury claims, correct?

2 A I am not a claim's evaluator.

3 Q Okay. And you would not consider yourself an expert in
4 evaluating personal injury claims relating to talcum powder
5 use, correct?

6 A Correct.

7 Q For purposes of your expert report, you did not
8 independently perform or provide any opinion on the estimate of
9 LTL's liability for talc claims. Correct?

10 A I did provide an analysis of opinions provided by others
11 with respect to whether they appeared to be exaggerated or not.
12 Certainly within a narrow time frame. But I did not provide an
13 independent valuation or estimation of the talc liabilities
14 themselves.

15 Q And your additional report does not include any estimate
16 of LTL's talc liability, whether performed by you, or anyone
17 else. Correct?

18 A I believe you are right. I know we talked about the
19 company's estimates. I don't remember sitting here, if it's in
20 this report, or the rebuttal report. I'm happy to take your
21 representation of that.

22 Q Well, you don't recall, in your first report, referencing
23 any estimate. Correct?

24 A Sitting here right now, I don't remember if that's in my
25 first report, or second report.

Burian - Cross/Torborg

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1 Q Very good. Mr. Burian, you're aware that the TCC retained
2 FTI Consulting and the Brattle Group as professional advisors
3 in LTL 1, correct?

4 A I am aware.

5 Q Okay. And one of the reasons they were retained was to
6 perform claims estimation work on the LTL talc claims, correct?

7 A I'm not sure.

8 Q What you do know is Houlihan Lokey was not engaged to do
9 that work for LTL 1, correct?

10 A Correct.

11 Q Mr. Burian, if you would go to Tab 5 in your binder --

12 MR. TORBORG: For the record, this is FTI's Interim
13 Fee Application for the period June 1, 2022 through September
14 30th, 2022. It's Debtor's Exhibit 544.

15 Q Mr. Burian, if you would go to, there's a, should be a
16 post-it note to assist you in getting to the page I'd like to
17 ask you about. Are you there?

18 A The post-it note appears to be on Paragraph 33?

19 Q Yes, sir.

20 MR. WINOGRAD: Your Honor, I would object. This is an
21 Interim Application filed by another entity. And it appears
22 from the tab that Mr. Torborg intends to ask this witness about
23 what was filed by another entity.

24 THE COURT: Well, let's see what the question is.

25 Thank you.

1 Q If you go to the bottom of the page, there's a code 28,
2 talc estimation, 3,728.9 hours. Do you see that?

3 A Yeah, that's right before Paragraph 33.

4 Q Yes. And then Paragraph 33 says, "During the third
5 interim period, the applicant reviewed and analyzed historical
6 trust distribution procedures, asbestos trust personal injury
7 questionnaires and verdicts, to assist the Committee in
8 understanding the debtor's talc liability.

9 The applicant also conducted research and prepared various
10 analysis regarding future talc claims in connection with the
11 debtor's talc liability. The applicant also spent time
12 preparing presentations for the Rule 706 Expert and the
13 Committee, regarding the debtor's current and future talc claim
14 estimates, as well as comparing statistical models in
15 connection with the forecast of future claims." Do you see
16 that?

17 A Yes, future talc claims. But yes, I see that.

18 Q Okay. Thank you. Your report did not address or
19 consider the talc liability estimation work that FTI had spent
20 at least 3,728.9 hours performing on behalf of the TCC,
21 correct?

22 A I do not reference FTI's work.

23 Q Okay. Now --

24 MR. WINOGRAD: Your Honor, I object again. I don't, I
25 don't understand the line of questioning. He's asking about --

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1 There's no foundation for this document. It's a document that
2 was filed with the Court by another company. And I don't
3 understand the line --

4 THE COURT: And it's not being offered for the truth
5 of the -- It's whether he's aware that they did work, and did
6 his report reference it.

7 MR. WINOGRAD: If they did work.

8 THE COURT: Well, he can answer that.

9 MR. WINOGRAD: Okay.

10 MR. TORBORG: Thank you, Your Honor.

11 THE WITNESS: -- answer --

12 THE COURT: That's the ruling.

13 MR. TORBORG: I missed the exchange. I missed that.

14 BY MR. TORBORG:

15 Q The Rule 706 expert was Mr. Feinberg, correct?

16 A I know Mr. Feinberg was retained by the Court to estimate
17 talc related liabilities. I'm not familiar with what Rule 706
18 refers to. So, I don't know that that's Mr. Feinberg. But
19 again, I'm happy to take your word for it.

20 Q I thought you were a lawyer. I thought you might know
21 that.

22 A I haven't practiced in 22 years.

23 Q Fair enough. You had multiple meetings with Mr. Feinberg,
24 correct?

25 A Obviously they were not that memorable, since in my

Burian - Cross/Torborg

18

1 deposition I only remembered one or two of them. But I had
2 multiple meetings with Mr. Feinberg.

3 Q If we could go to the next tab, Tab 6. Mr. Burian, for
4 the record, this is a Fee Application from the Brattle Group
5 for the same period of time, June 1, 2022 through September 30,
6 2022.

7 MR. TORBORG: For the record, it's Debtor's Exhibit
8 543.

9 Q If you would got to the third page of the document. At
10 the top it's titled, Section 2, Summary of
11 Services. Do you see that?

12 A There are no page numbers, but you have a sticker. And
13 opposite the sticker, by paragraph 14 -- Is that what you're
14 directing me to?

15 Q Not at first.

16 THE COURT: Oh, okay.

17 Q I'm going to go with -- If you just flip to the next page.
18 Flip that page, and it will be the one on your right.
19 Subsection 2 at the top.

20 A The next page says, Compliance with Guidelines and
21 Conclusion.

22 Q That's unfortunate. Are we on slide -- Are we on Tab 6?

23 A Yes.

24 Q Okay.

25 A Just tell me what paragraph number. There are paragraph

1 numbers.

2 Q You have to go back to the beginning.

3 THE COURT: Go to page -- Start at the beginning.

4 Q Back to the beginning. There's a chart there. If you
5 look at the screen it might just make this easier.

6 A Oh.

7 Q If you want to.

8 A But you don't know where that comes from. That makes me
9 nervous. So, Brattle's Monthly Fee Statements?

10 THE COURT: No, no. Go to your first page.

11 THE WITNESS: First page.

12 THE COURT: That's not -- Nope.

13 THE WITNESS: Oh, first -- This page?

14 THE COURT: Yes.

15 THE WITNESS: Okay.

16 THE COURT: Now, turn the first page.

17 THE WITNESS: Okay.

18 THE COURT: On the right. Right there on your right.

19 THE WITNESS: I am there. Thank you.

20 MR. TORBORG: There.

21 THE WITNESS: I went to your sticker. I thought we
22 were so prepared.

23 MR. TORBORG: I thought you told me you were a
24 certified skipper.

25 THE WITNESS: A skipper.

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1 MR. TORBORG: At deposition. I thought you would be
2 able to navigate these things.

3 THE WITNESS: That's why I skipped these pages.

4 MR. TORBORG: Okay.

5 BY MR. TORBORG:

6 Q So, the largest item down there is, hours wise, is
7 Research and Analysis, 747 hours. Do you see that?

8 A I do.

9 Q Okay. Now, if you go where the sticky is, Paragraph 17 --

10 A I'm there.

11 Q Okay. Under the section, Research and Analysis, it
12 states, "This category reflects time spent analyzing the number
13 in value of ovarian cancer claims in connection with the
14 debtor's talc liabilities." Do you see that?

15 A I do.

16 Q Okay. Now, did your report address or consider the
17 talc liability estimation work that the Brattle Group did on
18 behalf of the TCC?

19 MR. WINOGRAD: Your Honor, I would object. That's
20 not what was just read. Notwithstanding the fact that this,
21 again, is not Mr. Burian's documents. It does not say that
22 there was an estimation. It says there was time spent
23 analyzing, very different.

24 THE COURT: Rephrase the question.

25 Q Mr. Burian, did your work in this matter review any of the

1 work that the Brattle Group had done on analyzing the number in
2 value of ovarian cancer claims?

3 A No.

4 Q Thank you. When you were asked to evaluate whether LTL
5 was in financial distress, counsel for the TCC did not provide
6 you with any of the work that FTI or the Brattle Group had done
7 on claim's estimation in LTL 1, correct?

8 A Correct.

9 Q And we didn't ask you that either, correct?

10 A I don't remember if I did or didn't. But I don't have it.
11 And I didn't use it.

12 Q So, you didn't think to yourself, hey, didn't we spend
13 like 4,000 hours in LTL 1 estimating talc claims? Maybe I
14 should look at that when I'm supposed to do a report on
15 financial distress. Not something you thought of?

16 MR. WINOGRAD: Your Honor, objection. He just said
17 is this, that we spent all of this time. I'm not sure if royal
18 rule, but I object.

19 THE COURT: Sustained. Were you aware of the time
20 spent?

21 THE WITNESS: No.

22 THE COURT: By either of those entities?

23 THE WITNESS: Correct.

24 THE COURT: Okay. You weren't aware of any of the
25 time spent?

1 THE WITNESS: If you're asking me if I knew they
2 spent 4,000 hours, Your Honor. I had no idea.

3 THE COURT: But you did know --

4 THE WITNESS: I know that they were retained to look
5 at issues in preparation, or in some manner, with the work that
6 was done by the Rule 704 expert. I knew that. But I don't
7 know what the product was. I never saw anything of them. And
8 to the best of my knowledge, there is no estimation or final
9 document. I just don't know.

10 BY MR. TORBORG:

11 Q You do recall being provided in the court, from FTI, on
12 claim's estimation, which you opened, started to peruse, and
13 then decided it had nothing to do with your work. Correct?

14 A What I said in my deposition, and remains true, that I do
15 remember that there was a call about trust mechanics and other
16 items, where FTI had done a presentation regarding claims. And
17 I dropped off after a few minutes, because it wasn't something
18 to do with me. I'm not even sure what the topic of that report
19 was. I joined thinking it was a plan call, and not about
20 estimation of claims call.

21 Q Okay. And if it was a plan call, you would have stayed
22 around, because you were involved in planning, correct?

23 A I was actively involved in trying to find a solution to
24 this mess. And therefore understanding the different planned
25 dynamics were important. I was also active in some portions

1 of, as I still am today, in some portions of what would be a
2 TCC plan. But I would not be involved in things like
3 estimation of tort claims.

4 Q Okay. You do recall seeing some proposed values of talc
5 related claims from the Imerys case, correct?

6 A I think I testified, and it still remains true, that
7 someone has been talking about what the Committee, TDP, looked
8 like in Imerys, in a plan that was never confirmed.

9 And I said that was the extent of my knowledge or
10 participation in that issue. I'm not sure if you're -- I'm
11 not sure that rises to the level of being aware of any analysis
12 of claim events.

13 Q So, have you seen amounts regarding the value of claims,
14 correct? From Imerys?

15 A One more time. I have not seen amounts. I've seen a TDP
16 that was filed in the Imerys case by the TCC, that had a whole
17 grid with some numbers in it that someone told me, at one
18 point, that there was, for the highest level, there was X
19 amount that might be due.

20 Q If you would go to page 129 of your transcript, which
21 again, is Tab 2.

22 A Page 129 of the transcript?

23 Q Yes, sir.

24 A I am there.

25 Q Okay. I asked you, starting at line 18, "Okay, do you

1 recall just knowing what the general number was, regardless of
2 what you saw at presentation?" Answer, "I mean, number of
3 claims, we talked about before. Value of claims, I've seen.
4 You know, I've seen the Imerys Grid. Never got confirmed.
5 I've seen other things. I've seen all the work that Mullin
6 did. So, I guess I've seen book ends of the value of claims,
7 but I don't have any special knowledge or information that J&J
8 doesn't have."

9 A Thank you.

10 Q Was that your testimony?

11 A Yes. And it's still accurate. I forgot when answering
12 your question that I read the Mullin report. And the Mullin
13 report has an estimate of claims in the report. So, I guess
14 and cross references Imerys. So in that regard, it's another
15 data point that I've had regarding Imerys.

16 Q For your work in this case, you did not use any of the
17 Imerys values, or anything else you saw, in evaluating whether
18 LTL was in financial distress. And I'm speaking of your
19 initial report.

20 A So, just to be clear, you're asking me if I used a draft
21 TDP in a plan that was never confirmed, that I only saw
22 briefly, in an expert report in this case?

23 Q That's what I'm asking, yes.

24 A As you can tell from the tone of voice, no, I didn't. And
25 nor would I.

Burian - Cross/Torborg

25

1 Q Okay. You were happy just to rely on the Debtor's expert
2 on the valuation of claims, correct?

3 A We knew the Debtor was going to do an estimate. And we, I
4 did not do one on my own.

5 Q Now, Mr. Burian, you are aware that the TCC is preparing,
6 or has prepared a plan of reorganization. Right?

7 A Yes.

8 Q Okay. No one has shared with you any of the terms of that
9 plan, including any proposed claim values of the type that you
10 saw in the Imerys case, correct?

11 MR. WINOGRAD: Your Honor, I would just caution the
12 witness not to answer to the extent that anything is
13 privileged. Although I think this would be civil

14 A You said any. And then you said including. Just to be
15 perfectly clear, I have discussed terms of a plan of
16 reorganization, but none that relate to the value of individual
17 claims or a TDP Grid.

18 Q Okay. So, if there is a TDP Grid, or a schedule of
19 values, you haven't seen it. Correct?

20 A Not yet.

21 Q Did you hear anyone say that it exists?

22 A I don't know.

23 Q So again, Mr. Burian, you did not conduct a valuation of
24 talc claims in evaluating financial distress, correct?

25 A Correct.

1 Q And in you initial report, you did not perform any
2 independent cash flow analysis to evaluate whether LTL was in
3 financial distress. Correct?

4 A What I said at my deposition is that we didn't do a full
5 blown cash analysis of Holdco. But obviously my report has
6 cash flow materials regarding subsidiaries of Holdco and
7 Holdco, itself. As well as LTL. But we didn't put that all
8 together and make our own independent forecast.

9 Q Fair. Thank you. Now, you submitted a rebuttal
10 report in this matter. Correct?

11 A I did.

12 Q And in that report, you made certain changes to the
13 assumptions made by Dr. Mullin and Dr. Bell, correct?

14 A I --

15 Q You made those changes?

16 A When you say, made, I didn't go into their model and
17 change it. I did illustrate what those modifications, the
18 impact of what those modifications would be.

19 Q Now, with respect to Dr. Mullin, you had what you
20 characterized as some minor criticisms, correct?

21 A It's up to the Court to determine whether they're minor or
22 major. I have a list of four or five items, which we can
23 review.

24 Q Well, at your deposition you told me you had some minor
25 criticisms. Right?

1 A What I was referring to is, we do not dispute the bulk of
2 the work done by Dr. Mullin regarding his valuation of the
3 claims, his statistical analysis of the claims, his attribution
4 of future claims. Though most of the, my judgement, most of
5 the work by Dr. Mullin really isn't in those areas.

6 The areas that we did discuss were not directly related to
7 the value of the underlying tort claims. And that's why I
8 called those minor versus major.

9 Q Okay. You'll have an opportunity to elaborate when Mr.
10 Winograd asks you some questions. But do you recall referring
11 to your criticisms of Mr. Mullin's assumptions to be minor
12 criticisms?

13 A Only directly to the question you asked me a few minutes
14 before.

15 Q Okay. Now again, you're not an expert in the estimation
16 of asbestos related personal injury claims, correct?

17 A This may be the fourth time you asked me.

18 Q Second.

19 A Um no, I think it's the fourth. I've been counting how
20 many times you've asked that, and how many times I say yes or
21 no to a question. I want brownie points at the end.

22 Q And, in fact --

23 A Well, let me answer the question.

24 THE COURT: Is it going to differ from the other
25 three times?

1 THE WITNESS: No. But I'm entitled to say, correct,
2 one more time, and get brownie points for saying yes or no, or
3 correct or not correct.

4 Q And you have no material experience in asbestos related
5 tort litigation, correct?

6 A Correct.

7 Q Okay. You do take issue with Dr. Mullin's assumption that
8 LTL could face up to a hundred trials a year, right?

9 A Absolutely.

10 Q Okay. And you have not done an independent assessment of
11 the number of talc related claims, or trials, excuse me, LTL
12 could have faced if it hadn't filed a second bankruptcy case,
13 correct?

14 A You need to define assessment for me. I've listened to
15 the court hearings, proceedings in this courtroom. I've read
16 representations by the Debtor. And I've listened and carefully
17 considered arguments in other cases I've been involved in where
18 debtors have had strong views about how many cases they can
19 litigate simultaneously. I don't know if that rises to a level
20 of assessment in your mind, or not.

21 Q You didn't speak with any lawyers representing members of
22 the TCC for their views about how many trials could occur on an
23 annual basis, correct?

24 A Yes and no. The answer is, I've not specifically spoken
25 to a tort claimants members about that issue.

1 Q Okay. And you didn't read Mr. Birchfield's testimony,
2 when you submitted your rebuttal report. Correct?

3 A No.

4 Q Okay. In the case of Dr. Mullin's assumptions, all of the
5 changes that you made serve to decrease the near term costs of
6 talc litigation. Correct?

7 A Yes.

8 Q If you'd flip to Tab 12.

9 A Can I just go back and make sure that that's right? I
10 think that's right. I'm not one hundred percent positive
11 that's right about the fourth and fifth one, if you turn to
12 page 11 in my rebuttal report. It probably has the same
13 impact, but I want to be clear. Because I want to be clear.

14 Allocation of liability is not served as a modification
15 regarding reduction of liability. Frankly, in light of J&J's
16 exposure to punitive damages, it could increase the liability.
17 So, we just point out that there's no allocation. I'm not sure
18 that's fair to say that's an increase or decrease.

19 With respect to settlement values, I do point out that Dr.
20 Mullin claims that his estimates -- That would also be a
21 decrease. He claims they're high. And I point that out. So,
22 I guess you're right. That one we don't increase the
23 allocations. So, the last one is not necessarily a decrease.
24 In some respects it could be an increase.

25 Q In terms of the way that you ran the numbers, you don't

1 know how it came out. Right? When you ran your new analysis?
2 You talk about, in your rebuttal report, you don't know if it
3 increased or decreased the amount of yearly spending. As you
4 sit here today?

5 A Again, ignoring the allocation of liability as to J&J's
6 portion of it, we treated the liabilities monolithic, as if
7 they're all LTL's, which is probably not true. We pointed that
8 out, to be clear, that we were trying to limit issues in
9 dispute. And even under those analysis, there's no financial
10 distress.

11 But ignoring that issue, because I want to be clear, the
12 other modifications I made decrease the liability.

13 Q Let's go to Tab 12.

14 THE WITNESS: It was the sanitizer, not the Bible,
15 Your Honor, that fell.

16 Q Let me know when you're there.

17 A I am there. That looks like a plan of reorganization for
18 Imerys.

19 Q Yes, sir. Can you go to the last page? This is an
20 excerpt.

21 MR. TORBORG: For the record, this is an excerpt of
22 Debtor's Exhibit 493. In the interest of saving paper, and
23 getting these in the binder that I could carry, we just have
24 the pages.

25 THE COURT: There are additional pages. The Court

1 accepts.

2 MR. TORBORG: Yes.

3 MR. WINOGRAD: Your Honor, may I just ask, I just --
4 Is this the entire, at least the entire section that's on here?
5 It's hard to tell if this is the end of the section. Just that
6 it ends with a table.

7 MR. TORBORG: I believe it is. But I can't
8 (indiscernible) --

9 MR. WINOGRAD: Is there --

10 MR. TORBORG: I don't have a, I don't have the full
11 copy here right now.

12 MR. WINOGRAD: Is there a way to confirm that? I
13 mean, it's difficult to -- It's difficult to look at a chart.

14 THE COURT: Well, let me hear what the question is
15 before we go through that exercise.

16 MR. TORBORG: Yes, it's not going to be material to
17 the question.

18 BY MR. TORBORG:

19 Q So, this has a, what you're looking at is what you refer
20 to as a TDP Grid. Right?

21 A There's no label on this. But that's what it looks like.

22 Q And when you did your adjustments to Dr. Mullin's
23 assumptions, including the settlement values, you didn't
24 consider putting some of these values in your rebuttal report.
25 Correct?

1 A The question makes no sense. I can't answer yes or no.
2 Since I made no adjustments to Dr. Mullin's settlement values.

3 Q Right.

4 A Just make sure I understand the question. I did not
5 change any of Mr. Mullin's analysis about his estimation of
6 underlying claim settlement values.

7 Q You could have done that. But you didn't, correct?

8 A It sounds like you want me to be damned if I do, or damned
9 if I don't. But no, I don't think I'm qualified to have done
10 that.

11 Q Okay. And with respect to your changes to Dr. Bell's
12 assumptions, all of your adjustments to cash inflows serve to
13 increase cash flow. Correct?

14 A Yes.

15 Q Okay. One of your adjustments is to assume that a \$1.8
16 billion dividend issued by G.H. Biotech in 2022 would make its'
17 way up to Holdco in 2023. Correct?

18 A It was illustrative. But yes.

19 Q But you don't pretend to know that this dividend will, in
20 fact, be paid to Holdco in 2023. Correct?

21 A That's beside the point. But correct.

22 Q Right. Can you go to --

23 A The chart does not say it will be received. Nor does the
24 chart represent that I know it will be received. The chart is
25 illustrative as to the ability of Holdco to receive cash.

1 Q Back to your --

2 THE COURT: The process will be smoother if we just
3 stick to yes or no to answer the question.

4 Q Go to Tab 7, Mr. Burian.

5 A This is in your binder still?

6 Q It is in my binder. Yes, sir. Rebuttal Report. You can
7 use the other one if you'd like. It doesn't matter to me.

8 A I'm on Tab 7. And my rebuttal report in this LTL 2.0.

9 Q Okay. If you'd go to slide 26.

10 A Yes.

11 Q The second to last bullet, you wrote, "Bell admits that
12 four one hundred percent Holdco owned operative subsidiaries
13 are expected to generate an average of \$302 billion in cash
14 flows for each of the next five years, and pursuantly beyond."
15 Do you see that?

16 A I do.

17 Q Okay. Now, Dr. Bell's scenarios do include future cash
18 flow with respect to these wholly owned subsidiaries, correct?

19 A They do.

20 Q Mr. Burian, you believe a company can be insolvent
21 from a balance sheet perspective, but still not be in financial
22 distress, correct?

23 A Correct.

24 Q The likelihood, extent, and uncertainty of threatened
25 litigation would not be a factor you'd consider in assessing

1 whether a company is in financial distress. Correct?

2 A Standing alone, just because a company faces litigation,
3 and may be hard to value is not an independent factor of
4 financial distress.

5 Q It wouldn't be one of your factors at all, correct?

6 A I think we had a discussion, it was a philosophical
7 discussion as when is something a factor that you discount as
8 zero, or when is something a cause or an impact, and you look
9 to see whether it has, it becomes a factor. Right? That's
10 nuance in financial analysis.

11 Q Why don't we go to your deposition. Tab 2, again.

12 A Yes. Is there a page number?

13 Q Page 73. You're getting better at navigating.
14 You're faster than I expected.

15 A Yes.

16 Q I asked you the question, so line 23, page 73. "Next
17 factor you list is the likelihood, extent, and uncertainty of
18 threatened litigation. Is that, do you agree that that's a
19 factor that should be considered in assessing whether an entity
20 is in financial distress?" You answered, "Listen, the man --",
21 and you're referring to Dr. Bell, "-- cites nothing. He's
22 clearly making up factors to try to fit within this case. And
23 he's trying to say that I have to look at these potential
24 liabilities on litigations as a factor.

25 I've said earlier that threatened litigation is relevant

1 if it's certain and near term to meet the Third Circuit test."
2 And then you go on for a while. And you finish by saying, "It
3 wouldn't be one of my factors." Correct?

4 A Yes. I stand by my answer. That is, what I said was,
5 just because you have threatened litigation that's uncertain
6 does not, is not directly a factor of distress. There are many
7 business that have tons of litigation that are not in financial
8 distress.

9 I think that I said here, or a little later in the
10 deposition, is that if you have threatened litigation, that
11 impairs, impacts, diminishes value today, so you have a
12 connection to a business that's being impaired, the, of course,
13 you look at what degree the impairment a factor of distress.

14 Impairment can come from many different areas. I don't
15 think you necessarily look at it as a -- That just because of a
16 likelihood that someone gets sued, well the uncertainty of the
17 extent of that potential threatened litigation is in, and of
18 itself, a check the box, that's a factor, we're now one for
19 four that you're in financial distress. I don't believe that.

20 Q So, it's not a factor at all?

21 A One more time, now we're getting back to philosophy. What
22 I said to you before is, you can call it a factor, or you can
23 say it's a cause of another impact of financial distress. If
24 threatened litigation meant that you're a government contractor
25 and you can't get bonded, or you can't operate your business --

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1 I can give you examples of things I've worked on where
2 that could be a problem. Then you would be causing financial
3 distress. In my mind, the factor would be, you can't get a
4 government contract. You can't get an escrow. You can't get
5 an LC. You can't sign an indemnity agreement with a 20 or 30
6 year term to people who don't trust that you'll be around.
7 Those would be the factors. And the litigation would be a
8 cause impacting those factors.

9 But somewhere in this deposition I said to you, if
10 you want to call it a factor, then I'll give it a zero value in
11 the LTL case. Feel free to call it a factor.

12 MR. WINOGRAD: Your Honor --

13 THE COURT: Mr. Winograd, I didn't know if you wanted
14 me to stop him or not.

15 MR. WINOGRAD: I did not, Your Honor. And I realize
16 I absolutely did not. And I really, just for the benefit of
17 the Court, because I saw some confusion. The question in that,
18 the question was, I think it artfully asked in the deposition,
19 and if you look previously, it wasn't a factor that Mr. Burian
20 listed. They were discussing factors that Mr. Bell --

21 THE COURT: Bell.

22 MR. WINOGRAD: -- had listed in his report.

23 THE WITNESS: There's a typo in the question. Or the
24 question was asked wrong. I knew what David meant. What
25 (indiscernible) meant.

Burian - Cross/Torborg

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1 THE COURT: I knew the witness and the question.

2 BY MR. TORBORG:

3 Q But for LTL's bankruptcy filing, you agree that it's very,
4 very, very likely that a substantial number of additional talc
5 claims will be filed against LTC in the future, correct?

6 A I'm not an expert. I've been sitting in these courtrooms,
7 and I understand that there's an inventory of claims, that if
8 the automatic stay were lifted, would be filed.

9 Q But you don't know how many claims would be filed,
10 correct?

11 A I've heard, bits and pieces of other people's testimony.
12 But a lot of the work has not yet been done, I understand, on
13 these backlogged claims that might rise to a verified
14 complaint. So, there would be no way for me to estimate how
15 many of those claims are real or not real.

16 Q Mr. Burian, if you assumed there was an 80 percent chance
17 -- You know where I'm going with this, because this is your
18 language. If there was an 80 percent chance that a company
19 would be insolvent three years from now, but today is paying
20 its' employees, has vendor issues, has no solvency issues, and
21 is currently making money, you would conclude that that company
22 is not in financial distress, under your interpretation of the
23 Third Circuit Standards. Correct?

24 A I think you meant to say, no vendor issues?

25 Q No vendor issues, yes.

1 A Yeah, I believe what I said to you in my deposition is
2 that you've got to look at the --

3 Q That's all I need. Thank you. In your view --

4 THE COURT: Your attorney will elicit any other
5 additional information.

6 THE WITNESS: I'm not even sure if I answered the
7 question. But let's go on. If you're happy, I'm happy.

8 MR. TORBORG: Could I hear the answer back? Because
9 now he's getting me nervous I didn't get the answer that I
10 needed. Could I get the answer read back? No? Okay.

11 THE COURT: We haven't done that in years.

12 BY MR. TORBORG:

13 Q In your view, Mr. Burian, whether the correct estimate of
14 LTL's talc liability is today, assume we know what it is, okay?
15 Whether it's 8.9 billion, 22.5 billion, or 50 billion, wouldn't
16 change your fundamental analysis of whether LTL is in financial
17 distress today. Correct?

18 A If it did not impact the business today, or immediate to
19 whatever the Third Circuit Standard was, that is correct.

20 Q Okay.

21 A Immediate to an apparent, I think it was.

22 Q In evaluating whether an entity like LTL facing
23 significant future tort liability is in financial distress,
24 you do not think the standard for financial distress should
25 include assessment of whether future claims will be able to

1 cover other claims. Correct?

2 A It's the same conversation we had before. So, it's the
3 same answer. It's a --

4 Q Yes, correct? That's your view?

5 A It's something that would only be looked at in connection
6 with it's impact on another factor.

7 Q Okay. Mr. Burian, you've --

8 A (indiscernible) -- it's not.

9 Q Mr. Burian, you've been involved in bankruptcy related
10 matters for more than 25 years, correct?

11 A Correct.

12 Q But the LTL bankruptcies are your only experience with a
13 bankruptcy where a debtor is facing a mass amount of future
14 asbestos related personal injury claims, correct?

15 A When it comes to asbestos, that's correct.

16 Q Dr. Bell's report stated that a possible need to liquidate
17 significant assets would be a factor to consider in assessing
18 whether a company is in financial distress, correct?

19 A I remember him saying that.

20 Q Okay. And you believe that to be a fairly ridiculous and
21 contrived factor, correct?

22 A It sounds like something I might say.

23 Q Well --

24 A I don't remember saying that. It does sound like me.

25 You're going to show me the deposition where I said it, so I'm

Burian - Cross/Torborg

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1 happy to move this forward and say it sounds like me. I do
2 believe that Mr. Bell's factor in that regard, as it relates to
3 Holdco, is not relevant in these circumstances.

4 Whether I used those pejorative terms about the analysis,
5 I might of. I was getting worked up.

6 Q You testified at the motion, at the hearing on the motion
7 to dismiss in the Aearo case, correct?

8 A I'm sorry, I lost something there.

9 Q You testified at the hearing on the motion to dismiss, the
10 bankruptcy, in the Aearo case? Correct?

11 A I like to refer to it as the successful motion to dismiss.

12 Q In that case, one of the reasons you believed Aearo was
13 not in financial distress was because it would never be in a
14 position of having to liquidate its assets at a discount,
15 correct?

16 A The Debtor is who we were referring to at the time. And I
17 did say that the -- Which, by the way was an operating
18 business, had operating assets. And I did say that if it were
19 forced to liquidate its' operating assets, as the Debtor, that
20 could be something to be considered.

21 Q Okay. Thank you, Mr. Burian.

22 MR. TORBORG: I have no further questions. Before I,
23 should I move in exhibits now? Are we doing it now, or --

24 THE COURT: We're going to do that all at the end.

25 MR. TORBORG: Very good. Thank you.

Burian - The Court

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1 THE COURT: Let me just ask a quick question before
2 you start.

3 MR. WINOGRAD: Sure. Absolutely, Judge.

4 THE COURT: Mr. Burian, is it your understanding that
5 the Third Circuit laid out a standard for what financial
6 distress is? For immediate and imminent? Or a type of
7 financial distress for which a debtor should be able to file
8 bankruptcy, a Chapter 11 case?

9 In other words, is financial distress dependent upon
10 imminence or immediacy? Or is that simply required to file
11 Chapter 11? I'm just trying to understand that there's a
12 distinction.

13 THE WITNESS: So, I'm not a lawyer. And I'm not
14 going to be arguing --

15 THE COURT: But you've been discussing the Third
16 Circuit Standards, so I want to know what your understanding
17 is.

18 THE WITNESS: I just want to be careful. I think the
19 Third Circuit had a very thoughtful approach that if there's
20 immediate and apparent financial distress, e.g., there's a
21 cognizable almost apparent, almost obvious impact on the
22 Debtor, on the Debtor, then you need recognize that. And that
23 could be because of potential future events.

24 But it has to be, it has to have a degree of distress
25 today, tomorrow, in the very near future, that is, that is

Burian - Redirect/Winograd

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1 granular, that is real. Not just imagined. And the Third
2 Circuit continues to talk about threatened litigation as being
3 inherently uncertain, and not real enough to meet that standard
4 without an impact on the business today.

5 And I'm not an expert in this area with respect to
6 all of the legal arguments, but the Aeoro Judge did a full
7 review of all of the case law, and my understanding, adopted a
8 facts and circumstance test that was in line with the Third
9 Circuit and said that you'd have to find a near term business
10 issue. It can't just be, the sky may fall 20 years from now.
11 Or five years from now. Is that responsive?

12 THE COURT: It is. Thank you. Mr. Winograd.

13 THE WITNESS: And it wasn't a yes or no question.

14 THE COURT: I get the luxury of not having to limit
15 myself to yes or no.

16 MR. WINOGRAD: Your Honor, Michael Winograd of Brown
17 Rudnick for the TCC. And Your Honor, I would like to just pick
18 up just where you, where you left off.

19 REDIRECT EXAMINATION

20 BY MR. WINOGRAD:

21 Q Mr. Burian, you just discussed with the Judge the standard
22 that came out of the Third Circuit. Did you analyze, setting
23 aside the Third Circuit standard and whatever that may say as a
24 legal matter, did you analyze financial distress in a practical
25 sense based on your experience?

1 A Yeah, I've been doing this for 35 years and my job is to
2 represent creditors and debtors analyze whether they're in
3 financial distress, why they're in financial distress, how they
4 became in financial distress and what is the solution to
5 maximize value. And I used all those skills to look at LTL as
6 a debtor to determine whether in the full light of its facts
7 and circumstances it was in financial distress.

8 Q And you were asked earlier about valuation of whether you
9 value asbestos claims and I think you said that's one of the
10 reasons you didn't look at a TDP. I think you were shown and
11 talked about not changing the estimates for Mr. Mullin. Do you
12 do any valuations? Do you have experience in doing valuations?

13 A All the time.

14 Q And are you able to look at the valuations that were done
15 in this process and the assumptions that were done as a
16 procedural matter or otherwise and make an assessment as to
17 those?

18 A I think I'm a very strong observer. I think I have the
19 background and the skills to review valuation work, comment
20 upon it and look at LTL to determine whether or not it's in
21 financial distress.

22 Q You were asked about a hypothetical about the potential
23 ability, a factor relating to the ability of futures to
24 recover. Do you recall that?

25 A The futures?

Burian - Redirect/Winograd

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1 Q You were asked a hypothetical about the ability of future
2 claimants to recover whether that would impact your financial
3 distress analysis of the company now. You remember that?

4 A I think so.

5 Q With respect to LTL is there, are there any signs that LTL
6 will not be able to pay its current debts or future debts as
7 they become due as of right now?

8 A Well, as of today, there's absolutely no sign nor is there
9 any reason to believe that all claimants within any of the
10 ranges of valuation I've seen won't be paid in full.

11 Q And so setting aside claimants, is there, is there, with
12 respect to any hypothetical that you could come up with,
13 including the one you weren't sure about how it was asked,
14 looking at LTL, the actual LTL today, do you see based on your
15 experience any signs of financial distress?

16 A No.

17 Q And why is that?

18 A Well, it's not losing contracts. It's not operating
19 inefficiently. It doesn't have employees that are leaving or
20 quitting, vendors' or customers' issues. It's paying its debts
21 as they come due. It has no problem collecting on the
22 royalties that a subsidiary provides, it even invested in a
23 couple of royalties. There's no operating distress whatsoever.
24 There's no financial, that's circular. There's no operating
25 distress. There's no balance sheet, there's no distress

Burian - Redirect/Winograd

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1 anywhere in the system today that reflects any problems with
2 the underlying business.

3 Q If you could open up your opening report. I don't recall
4 which, either binder again. If you could open up to slide 40.
5 And while you're going there, you were asked whether you've
6 done any independent analysis of cash flow. Do you recall
7 that?

8 A Yes.

9 Q Can you tell me, if you look at slide 40, do you see the
10 little box with the balance sheet on it?

11 A I do.

12 Q Can you explain to me what that was, what that is and
13 whether that impacts any need for you to have done an
14 independent analysis at the time of cash flows?

15 A So Your Honor, you need to have a tiny bit of context.
16 We've been denied all access to provide the kind of work we
17 would typically do with respect to an operating business. And
18 everything is either through document dumps through discovery
19 or our understanding of Dr. Bell's conversation with unnamed
20 people in his reports. One of the items we got in response to
21 what is the liquidity in assets of Holdco is the balance sheet
22 you see on page 40 which is very interesting because later Mr.
23 Lisman and others dispute their own numbers.

24 But if you look at it, it says LTL has cash of 30 million
25 and the royalties of roughly 367. Then you see has cash of 400

Burian - Redirect/Winograd

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1 million. They've later learned that's only net 300 million.

2 THE COURT: Holdco has cash.

3 A Holdco has cash of 400 million. We've learned later that
4 there may be an intercompany payable so it's a net 300 million.
5 Then you'll see the interest, the minority interest in the
6 foreign subsidiary which is basically Janssen Pharmaceuticals
7 indirectly of \$20 billion in evaluation. Then you'll see if
8 you skip a line, other subsidiaries, \$6 billion, e.g., those
9 are the illiquidity interest in less liquid interest in the
10 subsidiaries hold by Holdco.

11 Then what do you see in the balance sheet right above
12 that, that I skipped? You see 1.8 billion 2022 dividend from
13 GH Biotech. It doesn't say interest in a subsidiary. It
14 doesn't say dividend, I don't know if it might or might not
15 ever show up or be available. It doesn't say never mind,
16 that's not real.

17 On the balance sheet it provides another \$1.8 billion of
18 dividend. Dividend was cash, we knew that. So when I'm asked
19 did you do this complicated analysis of cash flows, at a
20 company with minimum 30 million in cash and 50 million a year
21 coming up at a RAM and if necessary 400 million in proceeds for
22 the sale of RAM, out of Holdco that has an interest in
23 entities, we'll get to later that pay dividends, even Mr. Bell,
24 Dr. Bell confirms that the expectation is dividends coming up
25 from a hundred percent owned subsidiaries.

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1 We know that there was a plan for another \$5 billion
2 dividend of which only a portion would get to Holdco which we
3 can discuss in a minute. I didn't have some of those details
4 when the report was issued and we knew that there was another
5 1.7 something billion dollars that Holdco had and now find out
6 well, it doesn't really have, it might have had. In my left
7 pocket it had, in my right pocket it didn't have.

8 When you're talking about year term cash flow liabilities,
9 right, even Dr. Bell doesn't presume, in the worst of his worst
10 case scenarios that this money would be necessary in the short
11 term. So there was no analysis to be done.

12 Q So I would like to, --

13 MR. WINOGRAD: Your Honor, may I approach?

14 THE COURT: Yes.

15 Q I would like to hand you the declaration of Adam Lisman.

16 MR. WINOGRAD: I just printed another copy, Your
17 Honor. I didn't know if it would be handy for folks.

18 A Yes, I've seen this.

19 Q Okay. So have you had a chance to review this?

20 A This is the declaration Lisman filed shortly before the
21 start of the trial, mentioning me in a bunch of paragraphs,
22 yes.

23 Q Okay. And if you could open up to page 16. This is where
24 he says responses to certain Mr. Burian's assumptions and
25 conclusions, correct?

1 A Yes.

2 Q Now, I just want to, I just want to be clear about
3 something. Did you, did you do an analysis as to whether there
4 would be financial distress at LTL taking Mr. Mullin's
5 scenarios and numbers and, Dr. Mullin's numbers and scenarios
6 and Dr. Bell's number and scenarios without adjusting anything,
7 just taking their numbers for what they are, did you do an
8 analysis of financial distress based on that?

9 A Yes.

10 Q And what did you determine?

11 A Without any modification whatsoever it does not rise to
12 the level of what a practitioner would call financial distress
13 nor would the Third Circuit define as financial distress for
14 purposes of being titled to invoke the powers of bankruptcy.

15 Q If you look at paragraphs 41 to 42, you can see that Dr.
16 Mullin discusses, strike that. So after doing that analysis,
17 did you then do an analysis where you actually looked at some
18 of the assumptions underlying Dr. Bell's liability, sorry,
19 strike that, Dr. Mullin's liability analysis and Dr. Bell's
20 cash flow analysis?

21 A I had the pleasure of doing it twice since Dr. Bell
22 changed his analysis shortly before the trial.

23 Q And when you did those analysis, so you did one analysis
24 just taking their numbers for what they are, when you then
25 looked at their assumptions, did you challenge some of their

1 assumptions that you believed were faulty?

2 A I did.

3 Q Again here in paragraphs 41 and 42, there are some
4 criticism of one of those challenges to assumptions that Mr.
5 Lisman makes, do you see that?

6 A I do.

7 Q Do you have a response to Mr. Lisman in these paragraphs?

8 A Yes. I don't want to quibble with my own counsel but 41
9 and 42 is a much more broader point than just the analysis of
10 Dr. Bell and Dr. Mullin. The point that Mr. Lisman is making
11 is I have no right to assume that J&J will support its
12 subsidiaries if it has a liability that is due for which it
13 does not have immediate cash to pay.

14 And he points out that a), the only document I received
15 that discusses J&J's policies in this regard specifically says
16 it will support distressed subsidiaries. He says no, that's
17 not true. That actually there are three occasions when, I
18 almost said Purdue again, when J&J would have not continued the
19 business or support a subsidiary. And he cites Allios and he
20 cites SightBox and XBiotech.

21 Q And what is your view on those entities that he cites?

22 A This is thoroughly nonresponsive. This is if not
23 purposely intended to mislead the Judge, it's pretty close.
24 These are three businesses that J&J invested in that didn't
25 work out. So you know what they did? They shot him down. And

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1 you know what they also did? They paid all of their
2 liabilities, no bankruptcies, no unpaid employees, no scientist
3 going home to his wife and saying my research didn't work out.
4 I didn't get paid today, right?

5 These are situations where J&J conducted itself like every
6 other pharmaceutical company that develops drugs, some work,
7 some don't work. They're still in the contact lens business.
8 They're just not in that contact lens business. They're still
9 in the drug business. They're just not in this drug, it didn't
10 work out. But as far as I can tell from the search of the
11 discovery from the search on the Internet and Google and all
12 the rest, there has never been a bankruptcy an affiliate of
13 J&J, there has never been that J&J abandoned the business and
14 did not pay its debts and liabilities as contracted and as it
15 was due and owing. They may not like it at times but they paid
16 their bills.

17 Q If you look at paragraphs 43 and 44 of Mr. Lisman's
18 declaration, this is a second criticism with respect to where
19 he's talking about your reports, assumptions concerning
20 dividends, do you see that?

21 A Yes --

22 Q Did, what's your response to Mr. Lisman's criticism there?

23 A Your Honor, Mr. Lisman makes the point that a parent
24 company is not owed a dividend. It's not a debt. It's not
25 owed and that he makes the comment that J&J has all sorts of

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1 priorities and the money may have (indiscernible) for other
2 reasons and therefore may not get paid in the future. That's
3 basically O-43 and they've been giving it too much credit,
4 that's the point he's trying to make in 43 and 44. There are
5 two or three responses, one is, one is, Your Honor, the balance
6 sheet we received says an asset is \$1.7 billion of the dividend
7 that was recently paid. It sort of looks like it's owed and
8 that it's there.

9 Number two, even if it's not directly owed, J&J has a long
10 course of conduct of billions upon billions of dollars coming
11 up to one of two sources from foreign and domestic
12 subsidiaries. Either dividends or where they want to avoid
13 transfer pricing issues or tax issues, they make them into
14 company loans. They just lend it to the master -- The parent
15 is paying ten plus billion dollars in dividends a year shared
16 buy backs of billions of dollars, they are an enormous consumer
17 of cash. Where does that cash come from? Not because they
18 leave the money in subsidiaries around the world and just stock
19 pile it. And let's look at the evidence I had at the time when
20 I wrote my report.

21 One is, the subsidiary that creates all the cash behind
22 Holdco that Holdco only owns one third of roughly, has a
23 subsidiary beneath it to which all the cash has been provided
24 over \$20 billion. And you know what happened to that cash?
25 All lent to J&J through intercompany claims. It all found its

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1 way, the J&J treasure when J&J actually issued the \$1.7 billion
2 dividend, five billion of which 1.7 belonged to Holdco. You
3 know what happened to that money? They're right. It's not at
4 Holdco. It was provided to a wholly owned subsidiary of Holdco
5 indirectly and subsidiary of Absys (phonetic) which you may
6 hear about. You know what happened to that money? You're
7 right. Intercompany loan back to J&J used for coronate
8 purposes.

9 They have no problem accessing cash when they want to. So
10 Mr. Lisman makes the point, Mr. Burian makes believe that a
11 dividend is owe, ignoring the fact that that's the balance
12 sheet I received, with respect to that one dividend, ignoring
13 that Mr. Bell assumes dividends out into the future in
14 perpetuity or at least for the three year period he analyzes
15 and ignoring the fact that there's always been access to cash
16 when it's necessary in the history of J&J. I think that this
17 is at best misleading that I, my report depends on the payment
18 of these specific dividends.

19 MR. WINOGRAD: May I approach, Your Honor?

20 THE COURT: Yes, please. Oh, thank you.

21 Q Now, Mr. Burian, you mentioned a little earlier that after
22 you had done your rebuttal report Dr. Bell submitted a
23 supplemental report and that accounted for, well, that's right,
24 correct?

25 A Yes.

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1 Q Do you know why he submitted a supplemental report?

2 MR. TORBORG: Excuse me, Your Honor. Was this
3 produced to us?

4 MR. WINOGRAD: It's a demonstrative.

5 MR. TORBORG: Is the information, the data produced
6 to us in advance of today?

7 MR. WINOGRAD: No, it's a demonstrative and I'm going
8 to explain exactly what it is. It's the same chart that was in
9 his initial report, in his rebuttal report --

10 THE COURT: You say his, Dr. Bell?

11 MR. WINOGRAD: I'm sorry, apology, Your Honor. It is
12 the same chart that was in Mr. Burian's rebuttal report that is
13 simply adjusted based on the supplemental report that came in,
14 you know well after all the reports have been filed.

15 MR. TORBORG: I object to this going into evidence or
16 any consideration of it. It has his numbers on it. It should
17 have been produced to us so we could look at it and evaluate
18 it.

19 MR. WINOGRAD: Your Honor, --

20 MR. TORBORG: It's fully improper.

21 MR. WINOGRAD: Your Honor, the --

22 THE COURT: It's not coming into evidence. You can
23 testify based on it.

24 MR. WINOGRAD: Okay.

25 BY MR. WINOGRAD:

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1 Q So Mr. Burian, do you remember the data in which Dr. Bell
2 submitted his supplemental report?

3 A I do not. I remember I was quite worked up about it but I
4 don't remember the date.

5 Q Does June 20th, of 2023 sound familiar?

6 A I take your representation, I don't know.

7 Q So I want to just talk, just flip through these. There's
8 only three sheets. If you could take a look at page 1. This
9 is the original scenarios that Dr. Bell had, correct?

10 A Yes.

11 Q And these are the scenarios that are in, this is the table
12 that you had in your opening report, correct?

13 A This is the data from which the tables is drawn. This is
14 Dr. Bell's assumptions regarding how he analyzes Dr. Mullin's
15 information.

16 Q And now if you look at the second page, these are adjusted
17 dividend scenario assumptions, correct?

18 A Yes, these are the new scenarios that Dr. Bell dropped
19 one, notice the one that Dr. Bell dropped is the one that
20 assumed no dividends, right. He accepts the fact that
21 dividends have been paid and these are the updated scenarios
22 that Dr. Bell uses for analyzing financial distress.

23 Q And what do you, what do you, what conclusions do you draw
24 from this, from this table?

25 A Well, I draw a lot of conclusions. I'm not sure how many

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1 you want me to say in open court. So Your Honor, if you look
2 at page, the first page, you'll notice that in scenario one Dr.
3 Bell after chatting multiple, multiple times and relying in his
4 report on conversations with the accountants and lawyers and
5 cash management people at J&J concluded that 25 percent of his
6 scenarios would have no dividend, zero dividends, right.

7 THE COURT: Dividend from, be specific.

8 A Dividend going to Holdco --

9 THE COURT: From --

10 A -- from GH Biotech.

11 THE COURT: GH Biotech, okay.

12 A And Janssen. At that time, according to the testimony I'm
13 supposed to believe J&J was actively planning a dividend and
14 then made the dividend after the expert reports were due that
15 Dr. Bell says he knew nothing of. So just to keep in mind that
16 either they did not tell Dr. Bell what they were planning or
17 Dr. Bell has serious trouble with his scenario analysis
18 including a scenario that ignored what he was told that
19 dividends would be paying.

20 But ignoring that for a minute, we have four scenarios
21 here, all of them show significant cash flow coming up from the
22 100 percent owned subsidiaries and then it has different
23 assumptions after the cash flow to Holdco with regard to the GH
24 Biotech Janssen entities. In three of the four, in one of them
25 he merely had the 1.77 billion that at least I thought and I

1 believe he thought was already paid or about to be paid and the
2 other ones have continuing dividends.

3 The second page, are oops, this is what I really meant in
4 my scenarios and here are the three scenarios. In year one,
5 Dr. Bell continues to ignore the \$1.7 billion paid in 2023,
6 2022 that was on the balance sheet of Holdco and Mr. Wuesthoff
7 testified that he relied on. He ignores that as an asset
8 completely. It doesn't exist. I think the explanation is it
9 was lent to J&J and therefore it was no longer available which
10 of course we know is not true so that J&J pays their
11 obligations and it's a demand note but ignoring that minor
12 detail.

13 He includes 912 million in year one. You see that, Your
14 Honor?

15 THE COURT: I see it.

16 A Where does \$912 million come from? Well, Holdco
17 indirectly received \$1.8 billion dividends, 912 made its way to
18 Holdco. And again what happened to that money? It was lent to
19 J&J to be consumed in their cash management system. You know
20 what happened to the other \$912 million which is not listed as
21 an asset of Holdco? It went to that same subsidiary I told you
22 about before that's one hundred percent owned by Holdco and
23 then was once again there's a theme, lent to J&J from the
24 hundred percent owned entity controlled by Holdco. So he only
25 includes 912, which okay, because that is a Holdco asset,

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1 although it's now an intercompany claim against J&J. He
2 ignores the fact that the wholly owned subsidiary is owed 912
3 million on a demand note that can be recovered.

4 The other thing he ignores is the 1.7 billion paid the
5 year before. We now found out at about the same time as we got
6 the report from Dr. Bell is also in that wholly owned indirect
7 subsidiary of Holdco and also lent to J&J. So Holdco is
8 sitting on a pocket besides all its other assets in my report,
9 it's sitting on an entity that has \$2.7 billion of what we
10 understand are demand notes against J&J.

11 Now, they'll tell you yeah, but that money can't be
12 dividended to Holdco. Mr. Lisman will "paragraphs 40 to 40
13 whatever" in testimony and they may be right. There may be
14 transfer restrictions or worse yet, and this is a horrible
15 thing, Your Honor, they complain it may be taxed inefficient.
16 They may actually have to pay taxes on the money they earned,
17 which I know is an anathema to J&J and many corporates.

18 I pay taxes. When my wife wants to pay a car, I pay
19 taxes, then buy the car. They seem to believe that it's
20 financial distress to upstream money to Holdco to pay its
21 legitimate liabilities if that's going to cost taxes. Your
22 Honor, this money, company is so wealthy and so rich, it can
23 pay its taxes and still --

24 THE COURT: I'm going to stop you. I'm going to stop
25 you. We've gone way beyond.

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1 THE WITNESS: I was stopped.

2 Q So Mr. Burian, as of right now, just looking at the cash
3 available to Holdco, and the \$912 million demand note, how much
4 effective liquid assets are available to Holdco as of right
5 now?

6 A Well, I don't have a full up to speed, we talked about the
7 400 million less 100 million of intercompany claim unclear they
8 really set off against each other or not so it's a minimum of
9 300 million maybe more. Holdco has the 900 million demand note
10 that we know of, right. And then if we're acting independently
11 and acting in the best interest of Holdco at a minimum, it
12 could direct Absys to direct the wholly owned treasury
13 subsidiary to collect on its intercompany claim and then it
14 would have to engage lawyers and either upstream the money and
15 pay the tax or find another way to lend the money to Holdco to
16 pay its obligations.

17 We have not been given access to the company to understand
18 those what that tax would be or what the capital sufficiency of
19 that entity would be.

20 Q And if you turn to the last page of this demonstrative,
21 can you explain to us what we're looking at here?

22 A Sure. So Your Honor, what you see is on the top left
23 corner, unadjusted scenarios in Mr. Bell's new report. What
24 Mr. Bell concludes is it's a 50/50 chance that maybe in the
25 future Holdco will be unable to pay its debts. Ignoring for a

1 moment whether that may emanate to the parent financial
2 distress and remembering this is Holdco not even LTL, right.
3 This is Holdco, not the debtor. He concludes on his best
4 analysis it's a 50/50 toss up as to whether they'll be able to
5 their debts.

6 But that's unweighted. It's 50/50 based on the three
7 analysis. He never opines which of these analyses are more
8 likely than not. There's no judgment being provided. There's
9 no expert analysis being provided. It's I make up, well, it
10 went from a hundred and something to 81 or 82 scenarios. In 82
11 scenarios I dreamed up, 41 of them there may be a capital
12 insufficiency. May, may, 50/50.

13 And by the way many of them it's like \$200 million, for
14 you and me a lot of money. In J&J world, we're talking about a
15 pittance. So in those 10 of the 40 scenarios, they're
16 insolvent by 200 million or less. I then merely took his work
17 that's a 50/50 toss up and tried to give you as much
18 information as the Court would like to have as to how those
19 percentages change on small variations. If you go down the
20 page, I go from 100 trials to 10 trials. If someone doesn't
21 like 10 trials, I have with me 15, 20, 25, 30, 35, 40. Any
22 number the Court would like, I'm happy to provide.

23 Instead of taking the upper echelons or the assumptions of
24 trials, which there is no basis in fact or testimony, we took
25 what we think looks like a high estimate, ignoring economies of

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1 scale, ignoring the fact that they're doing the same thing over
2 and over again. We took the three and a half million dollar
3 numbers, the midpoint of their range and then we took the
4 historical average of nonlitigation and what we provided for
5 Your Honor on the first column is not touching any of Bell's
6 scenarios, not ignoring everything I've said about the money
7 and the system, how likely is it with no weighting, no
8 judgment, how likely is it that Holdco not the debtor can't pay
9 their debts? And the answer is somewhere between 50 percent,
10 sorry. They make, they have no problem the next three years 50
11 to 67 percent of the time.

12 MR. TORBORG: Your Honor, if we could get back to a
13 question and answer format here, it would probably be more
14 productive.

15 MR. WINOGRAD: Your Honor, he was just explaining, he
16 was explaining the chart, happy to walk through some of that.

17 A I only did the X access. I didn't do the Y access.

18 Q So Mr. Burian, can you just briefly explain for the Court
19 the Y access?

20 A Sure, I would be happy to. Your Honor, on the right side,
21 all I did was the same thing in my expert report but applied it
22 to the now lower numbers in the Bell report because he takes
23 out the 1.77 dividend which I don't think is appropriate.
24 Don't be confused. The 1.77 in my adjusted one is this year's,
25 is last year's, not this year's. There are two of them of the

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1 same amount.

2 And it doesn't necessarily have to be a dividend. I'm
3 just making the point that Holdco has access to cash flow
4 arising from the dividend, whether an intercompany claim or any
5 other way that Holdco can get money. If you nearly make small
6 adjustments that Holdco if necessary could go to Absys and say
7 I want my 2.7 billion and I'll pay the taxes. I'll do an
8 intercompany note. I'll figure it out. You know the J&J
9 lawyers are smart enough.

10 All you need to do is get a portion of that money and you
11 go to 80 percent to 90 percent that there's no problem for
12 Holdco three years out. And then if you assume that, you know,
13 Holdco is a rich company, if you assume you merely monetized 10
14 percent of its assets, a pittance of its assets, you get to 96
15 close to 100 percent of the time they're fine.

16 The only way they attempt to manufacture financial
17 distress is saying that a 50/50 risk that is totally and
18 completely manufactured and in J&J's control, might pause
19 Holdco not to pay its debt and have to sell an asset, and oh my
20 God, might suffer a discount or pay a tax. Holdco is not in
21 bankruptcy and even if it were, the fact that Holdco paid a tax
22 wouldn't disturb me that much when it has legitimate
23 obligations and women who are suffering and dying every day who
24 deserve to be compensated.

25 Q So Mr. Burian, just two final questions. With respect to

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1 what you just said, the hypothetical 50/50, 50 percent of the
2 time Holdco may not be able to pay LTL. Despite that whether
3 it's a hypothetical or a probability, whatever it is, does
4 that, has that uncertainty or probability or possibility, has
5 that impacted LTL either today or as of more importantly April
6 4th, 2023 from what you've been able to see in any way?

7 A Absolutely, positively, no.

8 Q And just to clarify, if you look at the 49 percent where
9 you're saying it's 50/50 percent of the time, that is just from
10 cash flows, correct?

11 A Yes.

12 Q So what does that not account for, any possibility of?

13 A Well, under Mr. Bell's analysis it does not include any of
14 the money sitting in either the wholly owned or partially owned
15 subsidiaries of Holdco. We talked about Absys, its
16 intercompany claims, nor does it include any monetization
17 whatsoever of assets or any continuing cash flow from Janssen
18 or the other operating businesses beyond the discounted
19 dividends that Mr. Bell includes.

20 Q Does it include any potential financing or loan from J&J?

21 A It does not include financing or loans or insurance or
22 anything from J&J or any third party.

23 MR. WINOGRAD: I have nothing further, Your Honor.
24 Thank you.

25 THE COURT: Thank you, Mr. Winograd.

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1 RECROSS-EXAMINATION

2 BY MR. TORBORG:

3 Q I'll endeavor to be brief.

4 A Me too.

5 Q Mr. Burian, your fundamental proposition here is that J&J
6 would support Holdco if Holdco needs the funds, correct?

7 A No.

8 Q But you do have that proposition, right? You said that?

9 A I believe Holdco independently can protect itself and at a
10 minimum J&J would get out of the way. But yes, I agree with
11 you that I do believe that J&J both historically and going
12 forward and everything I've seen would pay and allow its
13 subsidiaries to pay its debts as they come due. And would
14 never, ever allow me to be in control of Holdco and succeed to
15 Holdco's rights as a representative of creditors. And it would
16 rather pay its debts and allow that to happen.

17 Q And you relied upon a document you referenced that
18 suggested that J&J would not allow a company to go into
19 bankruptcy, right? You referenced that in your testimony,
20 right?

21 A Yes, said several, it said several things but that
22 included.

23 Q And you're aware of the fact that J&J actually did put an
24 entity in bankruptcy, it's called LTL, right? It's why we're
25 here.

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1 A One and two, has not paid --

2 Q Thank you.

3 A One second.

4 THE COURT: No, no.

5 A Has never --

6 MR. TORBORG: No, that's it.

7 THE COURT: No, you don't get to that. He controls
8 the questions.

9 Q And you do not render an opinion that all J&J subsidiaries
10 are alter egos of each other, correct?

11 A I do not render that opinion.

12 Q And you're not aware of any legal obligation that requires
13 LTL, requires J&J to lend either Holdco or LTL money, correct?

14 A Wrong, not correct.

15 Q Now, you acknowledge that there was a dividend, a \$1.8
16 billion dividend that might not get to Holdco --

17 A Just for clarity, you know I said not correct, right?

18 Q Yeah, I do.

19 A Okay, just want to make sure.

20 Q And you acknowledge that there was a \$1.8 billion dividend
21 that might not get to Holdco, correct?

22 A Which one are you referring to, sir?

23 Q The \$1.8 billion one that you talked about.

24 A There are two of them I talked about.

25 Q Okay. The first one, 2022. I believe that's the one that

1 you're referring to. That was my understanding.

2 A And what's the question now that I know which one you're
3 referring to.

4 Q Okay. You testified that it may not, it might not get to
5 Holdco.

6 A As a dividend.

7 Q Correct, right?

8 A As a dividend, correct.

9 Q And Mr. Lisman provided some testimony about how, about
10 why the dividend, why that amount did not make it up to Holdco,
11 correct? There were foreign restrictions on distributable
12 returns, correct?

13 A I don't remember Mr. Lisman talking about that particular
14 dividend. I remember him talking generally as to why dividends
15 may not end up at a domestic entity. I was not --

16 Q Now, you --

17 A For the record, I was not here for a large portion of Mr.
18 Lisman's testimony so I can't be held accountable for what he
19 said or didn't say when I was not here.

20 Q Now, you criticized Mr. Bell for not weighing the various
21 scenarios, right?

22 A Correct.

23 Q So he could have weighed those scenarios that supported
24 financial distress higher and you would have criticized him for
25 that, wouldn't you?

1 A (no audible response)

2 Q So he could have said I'm going to weigh all equal so I
3 can't be accused of bias, right?

4 A I think that is bias. I don't think that's not being
5 accused. I think making up scenarios that try to show
6 financial distress in circumstances that he admits in
7 retrospect were unreasonable is bias. And no, I would not have
8 criticized someone doing something unless I thought it was
9 worthy of criticism.

10 Q Now, none of the analysis that you did and that you have
11 included in this updated demonstrative includes any estimates
12 from the TCC about what they believe the talc liability expense
13 and total liability would be, correct?

14 A The total liability is not part of the chart, right?
15 Because this is the three year period so neither Dr. Bell's nor
16 this chart includes that issue so I'm consistent in that
17 allowance and then when it comes to the committee's view about
18 what potential litigation cost, it actually does include my
19 best understanding and my advice to my committee as to based on
20 the company's reputations what those costs are likely to be.

21 Q And my question is a little different, right? Your
22 analysis and your what I'll call mark up of Dr. Bell's
23 scenarios, does not, is not informed at all by what your client
24 believes the talc liability is, correct?

25 A We discussed that, correct. I do not have an estimate of

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1 the aggregate future Talc liabilities.

2 MR. TORBORG: That's all the questions I have. Thank
3 you.

4 THE WITNESS: Beyond, beyond what's in Mr. Mullin's
5 report. I don't have from the TCC.

6 MR. TORBORG: Thank you.

7 THE COURT: Thank you.

8 MR. WINOGRAD: Your Honor, I just have one, --

9 THE COURT: All right.

10 MR. WINOGRAD: -- maybe two questions.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. WINOGRAD:

13 Q Mr. Burian, in his redirect a moment ago, Mr. Torborg
14 asked you if you knew of any companies that J&J put into
15 bankruptcy. Do you recall that?

16 A I do.

17 Q And then he pointed out that LTL was in fact put into
18 bankruptcy, correct?

19 A Twice.

20 Q Do you know why LTL was put, strike that, Your Honor. Do
21 you know why LTL was created?

22 A I do, I think I do.

23 MR. TORBORG: Objection, foundation.

24 THE COURT: I don't even think it's needed.

25 (laughing)

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1 THE COURT: Everybody in this room can answer the
2 question.

3 MR. WINOGRAD: I concur.

4 THE COURT: Efficiently and effectively.

5 (laughing)

6 Q Mr. Burian, Holdco on the other hand, Holdco is the
7 successor of J&JCI, correct?

8 A Through name changes and the rest basically, yes.

9 Q J&JCI was the company involved in the Texas Two Step,
10 correct?

11 A One of them, yes.

12 Q Was, did Johnson & Johnson put J&JCI into bankruptcy?

13 A No.

14 MR. WINOGRAD: I have nothing further, Your Honor.
15 Thank you.

16 THE COURT: All right. We done? All right. We're
17 done. Thank you, Mr. Burian, for your time today.

18 THE WITNESS: Thank you very much. No references to
19 offers. Do I take this with me or leave it here?

20 THE COURT: Just leave it unless you want a souvenir.
21 We will take, let's return at three o'clock. And we have Mr.
22 Bell.

23 UNIDENTIFIED SPEAKER: Dr. Bell, Dr. Mullin.

24 (Recess from 2:52:27 p.m. until 3:09:05 p.m.)

25 MR. WINOGRAD: Your Honor, may we just have a quick

1 two minutes?

2 THE COURT: Sure.

3 MR. WINOGRAD: Thank you.

4 MR. JONAS: Your Honor, we're ready to proceed.

5 THE COURT: All right. Let me, are we ready, Wendy?

6 THE CLERK: Yes, ready, Judge.

7 THE COURT: There we go.

8 MR. JONAS: Your Honor, Jim Jonas again, from Jones
9 Day and for the debtor. I think the next witness to be called
10 is from our side and we call Dr. Mullin back to the stand and
11 I'm going to with leave return to him in case he doesn't have
12 his reports up there, his initial and his rebuttal report.

13 THE COURT: All right. Thank you. Dr. Mullin, you
14 are still under oath.

15 DR. CHARLES H. MULLIN, RESUMES THE STAND

16 THE WITNESS: Understood. Thank you.

17 MR. JONAS: Your Honor, at this time we have no
18 questions for Dr. Mullin.

19 THE COURT: I'm waiting for that shoe to drop. I was
20 looking back at Mr. Thompson.

21 MR. JONAS: Your Honor, we've canvassed on our side.
22 I don't think there will be any questions.

23 THE COURT: All right.

24 UNIDENTIFIED SPEAKER: Have a nice day.

25 MR. JONAS: Thank you, Dr. Mullin.

1 THE COURT: Do you want to take some time to talk?

2 UNIDENTIFIED: Let's give ourselves two minutes, Your
3 Honor.

4 MR. WINOGRAD: Talk about what?

5 THE COURT: Nine holes this afternoon is looking
6 better.

7 (laughing)

8 UNIDENTIFIED: Ms. Kaplan is still not back in town.

9 THE COURT: Yes.

10 UNIDENTIFIED: Very few questions, Your Honor. Your
11 Honor --

12 UNIDENTIFIED: I'm sorry, Mike, go ahead.

13 UNIDENTIFIED: No, go ahead.

14 UNIDENTIFIED: Your Honor, he has had his direct.
15 There was no cross. I don't think they're entitled to ask any
16 additional questions. Your Honor, the rules of redirect have
17 been fairly loosely applied here today. I will not be, and
18 without objection from time to time and we don't plan to be
19 long.

20 THE COURT: I think it will be limited.

21 MR. WINOGRAD: Your Honor, if the other, --

22 MR. JONAS: Mike, Your Honor, to say that it was
23 difficult achieving what we achieve this afternoon would be,
24 would not do it justice. So we've managed to do that based on
25 an assumption --

1 THE COURT: That they would not be asking questions.

2 MR. JONAS: And that's how we, so we think the rules
3 are. And so unless the rules have changed, we would oppose, we
4 would oppose any redirect. They're not entitled to any. His,
5 he has submitted his direct testimony.

6 UNIDENTIFIED: Your Honor, if I may. Mr. Burian from
7 whom you heard at some length today, rendered a rebuttal report
8 about what you heard to which Dr. Mullin has not had a chance
9 to respond. Our redirect would be limited to that rebuttal
10 report and could be conducted in a matter of very few minutes.

11 MR. WINOGRAD: One last question. Your Honor,
12 setting aside the obvious that if they are going to ask
13 questions, then I don't, you know, it's not within the rules.
14 We came to an agreement which they've enforced with us multiple
15 times. The agreement was that directs for fact witnesses would
16 be done by declaration and directs for expert reports would be
17 done through reports and that's what was done. There's just no
18 basis to say they now want a second bite at the apple to go
19 after a witness who testified this morning.

20 MR. JONAS: Your Honor, I really have nothing more to
21 say than --

22 THE COURT: I know.

23 MR. JONAS: -- you may be interested in the answer to
24 these questions and we would like to ask them in as abbreviated
25 fashion as can be done.

1 MR. WINOGRAD: And Your Honor, if you're going to
2 permit that, respectfully I would need to, I think we're
3 entitled to regroup. We reached an understanding in reliance
4 on rules.

5 THE COURT: Well, if I allow them to inquire into the
6 rebuttal report only and limit it, you're recross.

7 MR. JONAS: I disagree, Your Honor respectfully.

8 THE COURT: Why?

9 MR. JONAS: Because I in reliance on certain rules
10 that we think out of the rules, I don't think anybody is even
11 disagreeing with that, our side I was able to get agreement on
12 our side not to do any cross examination. And if in fact the
13 rules have changed, then they're going to get to do what they
14 say is a limited redirect. I'm not saying as an absolute but I
15 think, I at least owe it to the movants to have a discussion to
16 see whether we want to change course and per our right do a
17 cross, do crosses. So that's all I would ask Your Honor. If
18 you're going to allow them to do it, I need just a few minutes
19 to canvas.

20 THE COURT: Okay.

21 MR. JONAS: Thank you.

22 THE COURT: Then why don't you canvas?

23 MR. JONAS: And Your Honor, I will limit the
24 examination, I would hope to conduct to the scope of Dr.
25 Mullin's response to the rebuttal report of Dr. Burian, or Mr.

1 Burian.

2 MR. WINOGRAD: Your Honor?

3 MR. MAIMON: I don't believe --

4 MR. WINOGRAD: Hold on, --

5 MR. MAIMON: -- that the rules allow for reports,
6 rebuttal reports and you don't get a surrebuttal report.

7 That's not the rule. But they don't get --

8 THE COURT: Well, it's not --

9 MR. MAIMON: They don't get a surrebuttal report
10 because then as we say, there's no end to the matter. So
11 either, either we're going to do a cross or we're not going to
12 do a cross but we're not going to be limited by what they want
13 to do now.

14 MR. WINOGRAD: Sorry, Judge. Your Honor, the idea
15 that the scope of a response to Mr. Burian's rebuttal report is
16 somehow limited is just, it's just a fallacy. That is a
17 substantive report that would open the door for them to ask I
18 suspect an entire line of questioning that they would do in any
19 event.

20 MR. JONAS: Your Honor, my last piece to be spoken
21 here is that you saw earlier this morning that Judge Ferguson
22 went, I would say liberally beyond the scope of the cross
23 examination which may have been no questions or a question or
24 two. So whatever rules we are suggesting are in play have been
25 honored in the breach by my colleagues at table to my right. I

1 leave it to your discretion, Your Honor.

2 THE COURT: All right. Well, what I'm struggling
3 with is what I would like to see happen and my desire to have a
4 complete record. So you can caucus, you don't need not caucus,
5 you can cross examine as you wish. You can decide what you
6 will do.

7 MR. JONAS: May we have a moment, Your Honor?

8 THE COURT: Yes.

9 MR. JONAS: Just two minutes, Your Honor.

10 THE COURT: No, that's fine. I'll make it easy for
11 you. I'll be back in five minutes. Everybody take a break.

12 (Pause from 3:17:05 p.m to 3:20:57 p.m.)

13 MR. JONAS: -- It still shows no microphone up there.
14 Okay. Judge, I think you said that our, if you call it a
15 cross, that they would be allowed to do a redirect. We would
16 then, our cross would not be necessarily would not be limited
17 to their redirect. And if that's what you said and those are
18 the rules, Your Honor, we're prepared to move forward and we'll
19 see how, we'll see how it goes as to whether or not we would do
20 any crosses after. We'll see how this goes and proceed from
21 there.

22 THE COURT: That would be the proposal. You still
23 want to go forward?

24 MR. JONAS: We do Your Honor. Very good, thank you
25 Your Honor.

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1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. JONAS:

4 Q Dr. Mullin thank you for returning to the stand. We
5 pardon the interruption. I'm going to hand you --

6 MR. JONAS: If I may approach Your Honor.

7 Q A copy of Mr. Burian's rebuttal report that has been
8 previously discussed with Mr. Burian today.

9 A Thank you.

10 THE COURT: Thank you.

11 Q Dr. Mullin you've seen Mr. Burian's rebuttal report?

12 A I have.

13 Q And you have before you a copy of it?

14 A Yes.

15 Q And I'd like you to turn to page 9, slide 9 of the report.
16 Apparently it's Exhibit 1112. Can you turn to that page with
17 me briefly.

18 A I am there.

19 Q And you see that at the top of the page Mr. Burian has
20 written, uncertainty is the key theme, underscoring that
21 Mullin's estimations are unreliable. And just beneath that Mr.
22 Burian has written, the Mullin report uses the appearance of
23 mathematical complexity to obfuscate a clear lack of financial
24 distress. Do you see that?

25 A I do.

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1 Q And could you tell us your response to that charge?

2 A So there is a fair amount of uncertainty. Uncertainty is
3 common in a mass tort. And when you estimate them whether it's
4 for SEC disclosure purposes, a bankruptcy proceeding, insurance
5 coverage, you are reducing that to mathematical formulas. And
6 you give scenarios and ranges. It doesn't mean the work is
7 unreliable, you're just properly characterizing the amount of
8 uncertainty that exists by providing scenarios that
9 characterize a range.

10 Q And is that what economists do?

11 A In the face of uncertainty, that is frequently what
12 economists do.

13 Q Thank you Dr. Mullin. Will you turn to page 11 of Mr.
14 Burian's report, rebuttal report. And you see at page 11 he
15 lists another page, almost a page full of critiques of your
16 opinions. Do you see that?

17 A I do.

18 Q And in part the slide reads, at the top, and what seems to
19 be obscured by my staple and something called, there it is, in
20 the corner of the screen. It says "Many of Mullin's
21 assumptions are unreasonable. Modifications to them further
22 demonstrate that LTL was not in financial distress, do you see
23 that?

24 A I do.

25 Q And then there are some boxes along the left or near boxes

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1 along the left margin of the rebuttal report page 11 in which
2 he sets out his critique and summary, critiques, plural, in
3 summary fashion. Do you see that?

4 A I do.

5 Q Can you, and the first one is that Mullin's liability
6 cases, plural, assume that, assume rather between 20 trials per
7 year, 60 trials over three years for the selective low case and
8 100 trials per year, 300 trials over three years for the
9 litigate all and selective high cases. Could you share with us
10 your view about whether that critique is fair and accurate in
11 your view.

12 A I don't feel it is fair and accurate. There is
13 uncharacterizing a range. How the MVL was trying zero cases
14 for ovarian cancer there were trying around 12 cases a year.
15 And so two of those typically ovarian cancer cases and about 10
16 of them mesothelioma cases.

17 So once the cases become active or available for trial
18 from an MVL setting, that will go up. There's also a backlog
19 in that nothing's been tried from the last couple of years as
20 LTL-1 and LTL-2 have stayed those trials.

21 Q Dr. Mullin the next critique is cost for trial. I'm
22 sorry, yes, cost for trial. And here Mr. Burian claims that
23 all of Mullin's liability cases, litigate all, selective low
24 and selective high assume trial costs would be five million per
25 trial. And then his sub-bullets state that the Debtor and its

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1 professionals have indicated a historical cost range of two to
2 five million per trial and Mullin does not account for any
3 economies of scale or other reductions in trial spend in
4 litigating hundreds of trials. Could you share with the Court
5 your response to that critique?

6 A So the historical trial cost range that, where he's
7 quoting some representatives of the Debtor aren't inconsistent
8 with the five million. The five million is coming from actual
9 underlying records that are recorded to an individual claimant.

10 The trial itself is a subset of those costs. So it's
11 common for the trial itself to be, if you say from day one of
12 trial commencing through the verdict to be two to five million
13 dollars. But there's another million and a half dollars in
14 pretrial costs associated with the claim on average. There's
15 almost a million dollars of expenses associated with the claim
16 on average. And there's a little bit over half a million
17 dollars of post trial costs associated with the claim.

18 So this is more just ships passing in the night and
19 understanding the underlying data. So start to finish, a case
20 that's taken to trial through appeals is averaging around \$5
21 million. But two to five of that is the trial itself.

22 Q Next, thank you Dr. Mullin. Mr. Burian suggests that your
23 non-trial litigation costs scenarios or cases take historical
24 non-trial costs and multiply that number by 250 percent without
25 a concrete basis for inflating the costs in that manner. Is

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1 that a fair criticism?

2 A The bases are described in the report. There again, as
3 the MDL moves out of a Daubert phase into actually evaluating
4 individual cases for the ovarian cancer claims, those costs
5 should increase. By exactly how much has uncertainty.

6 So I did a range of from the low end of 75 percent to a
7 high end of 250 percent. Those ranges are taken off of the
8 nominal values of expenditure from back, to this point if I
9 average about four or five years ago, with no adjustment for
10 inflation.

11 So if you were to take into account the inflation of legal
12 fees, it's probably more, inflation adjusted, about a doubling
13 of costs to about 50 percent of costs on the low end.

14 But there's, there is a fair amount of uncertainty
15 particularly as to what will happen on the ovarian cancer
16 claims in the MDL.

17 Q Thank you Dr. Mullin. Do you know whether Mr. Burian had
18 access to the underlying litigation cost information that you
19 have?

20 A I know it was produced to me. I know that it was produced
21 along with my initial expert report, so it was available. I
22 don't know if he actually ever received it or not.

23 Q Thank you Dr. Mullin. His next criticism is of your
24 estimated settlement ranges. Can you respond to that for us?

25 A So there's an assertion that I'm extrapolating from one

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1 early settlement. And while I believe that's reference to the
2 first Lanier master settlement agreement in the ovarian cancer
3 claims. And while I do look at that master settlement
4 agreement and the values, I look at the second Ms. Armstrong
5 for Lanier. I look at the four master settlement agreements
6 with four other law firms as well as a comparability analysis.
7 So there's multiple lines of analysis that are going into that
8 value. It's not simply an extrapolation of one.

9 And the Mesothelioma claims, there is a broad range of
10 value. 95 percent of the historical payments are to claims
11 that received more than \$200,000. And so if you want to try to
12 estimate what is roughly going to be the cash flows going out
13 the door in the next three years, you really can focus on where
14 95 percent of the money is being incurred which is what the
15 report does.

16 So it focuses on those claims that are worth more than
17 200,000. And then it does gross up and add the other five
18 percent back in, but it doesn't do a formal forecast to the
19 other five percent.

20 Q Thank you Dr. Mullin. And last Mr. Burian critiques your
21 opinions and he mentioned it again here today I believe if I'm
22 not mistaken, failure to ascribe in his view allocation of talc
23 liability to an enterprises other than LTL. Do you have a
24 response to that?

25 A I was maintaining the historical accounting and what I

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1 believe is the position of LTL that the liabilities all do
2 ultimately reside with LTL. And the, as far as other
3 defendants, there haven't been any recoveries from other
4 defendants.

5 So while in release we'll typically release LTL, we'll
6 release (indiscernible). It may release lots of retailers or
7 different entities. There's never to my knowledge any recovery
8 from any of those other entities.

9 Q Thank you Dr. Mullin. I have no other questions.

10 THE COURT: All right, thank you.

11 MR. WINOGRAD: Your Honor, Michael Winograd, Brown
12 Rudnick for the TCC. Your Honor I'm going to try my best as we
13 go to streamline this.

14 UNIDENTIFIED: I tried Your Honor.

15 CROSS-EXAMINATION

16 BY MR. WINOGRAD:

17 Q Dr. Mullin I just want to talk, the first thing that your,
18 that counsel talked to you about was uncertainty. Do you
19 recall that?

20 A Yes.

21 Q And you do, just so we have some context, you did two
22 analyses, correct, in terms of predicting the balance sheet
23 long term and cash flows in the short term, correct?

24 A Correct.

25 Q And you try and estimate the personal injury talc

1 liabilities in both of those scenarios, right?

2 A The balance sheet tests is really, should be viewed as an
3 upper bound on those liabilities. It's not trying to estimate
4 an unbiased number. It's trying to see, if anything err on the
5 high side because I understood its purpose was to check for
6 solvency.

7 Q Okay. And so with respect, let's start with that, the
8 balance sheet, the long term. That includes both current and
9 future claims, correct?

10 A Correct.

11 Q And it includes all the unfiled claims we know about,
12 correct?

13 A Correct.

14 Q And you, and again the future claims that you have a
15 section devoted to as to any future claims, correct?

16 A Correct.

17 Q And then like you said you came up with the high end
18 estimate, right?

19 A Correct.

20 Q And that's not an unbiased middle of the road estimate,
21 right?

22 A Correct.

23 Q But intentionally skews things high, correct?

24 A On the balance sheet, that's correct.

25 Q And, on the balance sheet. And that estimated range is

1 \$11 billion to \$20 billion for the personal injury liability,
2 right?

3 A I wouldn't do it as a range. I did a stress test that
4 went up to 20 billion. So there is a stress test at 20
5 billion. There's an estimate that I think skews high, but it's
6 not what I'd call a stress test.

7 Q Okay, so let's talk -- but by the way, we'll talk about
8 that in a second. So, because I want to talk about, in
9 addition to that because the Court may hear different numbers
10 like 11 to 21. In addition you estimate that the NAD, the net,
11 for the government claims is less than a billion dollars,
12 correct?

13 A NPV?

14 Q I'm sorry, net present value, sorry.

15 A Okay, that's what I thought you meant. I was just making
16 sure.

17 Q Yeah, I apologize, thank you. The NPV for the government
18 claims is less than a billion dollars, correct?

19 A Correct.

20 Q All right. So I want to talk about that low end of the
21 range. Again that low end of the range to account for
22 uncertainty has assumptions in there that likely overvalue what
23 you believe the liability would likely be, correct?

24 A Correct.

25 Q And for example with respect to the ovarian cancer claims,

1 with respect to the uncertainty you make assumptions that will
2 likely overvalue. And with respect to the meso claims you make
3 assumptions that likely overstate the number of core claims and
4 average payment, right?

5 A Correct.

6 Q And the high end range you said, notwithstanding that the
7 low end of the range already you believe is above expectations,
8 the high end goes to a high end stress test that is even at a
9 higher end, correct?

10 A Correct.

11 Q Now I just want to talk about the cash flow analysis very
12 briefly again in this topic of uncertainty. The cash flow
13 analysis in the first three years, there is still significant
14 uncertainty about what the total LTL expenditure would be even
15 just for that three year term, correct?

16 A Correct.

17 Q So I want to now talk about trials. You talked about 100
18 trials per year in, a little while ago, a range of 20 to 100
19 trials per year. So you have three scenarios, correct, in your
20 analysis of cash flows, right?

21 A Correct.

22 Q And you have, one is litigate all. That means that the
23 company decides to go and litigate everything, correct?

24 A Yes.

25 Q And not settle anything.

1 A Correct.

2 Q And so for example in, strike that. And then you have
3 another one that's selective, low, correct? Where they
4 litigate some and they also settle some, correct?

5 A Correct.

6 Q And then you have a selective high where they litigate the
7 same number of trials as the litigate all but at the same time
8 they settle on a higher level as well, correct?

9 A Correct.

10 Q And so with respect to trials in your scenarios two out of
11 those three scenarios have 100 trials per year, correct?

12 A One caveat.

13 Q Sure.

14 A The two do, but the two that have 100 are the litigate all
15 and the high end.

16 Q Correct.

17 A I think the way you phrased the question before and I said
18 yes too quickly had the middle scenario of 100 trial.

19 Q Okay, I didn't mean to suggest that.

20 A So that one is the one at 20.

21 Q Okay, all right. So it's 100 for litigate all, 20 for the
22 middle scenario selected low and then back to 100 for selective
23 high, right?

24 A Correct.

25 Q And you don't think even in those two scenarios that use

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1 100 trials a year, you don't think those 100 trials, that's not
2 a maximum, right?

3 A No, there's been examples where entities, like the Dow
4 Corning references 90 trials slated in the six months right
5 before they filed for bankruptcy.

6 Q Okay. Well we're going to come back to that in a moment.
7 We're going to come back to that. If you are going to, but in
8 your opinion if you're going to do a high range to see where
9 expenses could go, 100 trials seems, as a high end, seems very
10 appropriate to you, correct?

11 A Correct.

12 Q But you admit that doing 100 trials a year would be
13 difficult, right?

14 A Correct.

15 Q And if you look at your report at paragraph 67 you offer a
16 citation as dockets, as an example of cases that have, of a
17 case that has actually done more than 100 trials and year. And
18 you say at paragraph 67, "During the mid 1990s a single
19 asbestos, Owens Corning, tried more than 200 cases per year",
20 correct?

21 A Correct.

22 Q And that's what you relied on in that report, right?

23 A That they tried more than 200 cases, yes.

24 Q And that's at paragraph, that's paragraph 67 and at the
25 bottom of that page footnote 80, correct?

1 A Correct.

2 Q But you don't actually know how many trials Owens Corning
3 did in any given year, right?

4 A We know they tried more than 200 cases in many years. But
5 they may have had a number of them consolidated into, in a
6 consolidated, trial framework. So the statement in the report
7 is they tried a number of cases per year.

8 And you're correct as we discussed in the deposition, the
9 citation with the number of plaintiff verdicts.

10 Q Right.

11 A Multiple of which could occur in a single trial.

12 Q Uh hum.

13 A So you could have consolidated a number of those cases
14 into a common trial. But the statement of the number of cases
15 is correct.

16 Q Who's statement of the number of cases is correct?

17 A The statement in my report about how many cases they tried
18 in a year.

19 Q Okay. In your report, let's take a, let's open up your
20 report. Do you have that in front of you?

21 A I do.

22 Q If you could go to paragraph 69.

23 A I'm there.

24 Q I'm sorry 67, I apologize. So if we take a look at
25 paragraph 67 you say, "The asbestos trial docket provides

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1 another illustrative example. During the mid 1990s a single
2 asbestos, Owens Corning, tried more than 200 cases per year."

3 Do you see that?

4 A Yes.

5 Q And in your footnote, is footnote 80. And if you go down
6 there you cite to an expert report of Dr. Peterson, correct?

7 A Yes.

8 Q Now Dr. Peterson, in fact you cite specifically to a
9 table, table 2 at page 5, correct?

10 A Correct.

11 Q Now that table 2 at page 5 does not provide a number of
12 trials per year, correct?

13 A It provides the number of claims or cases that were tried
14 to a plaintiff verdict.

15 Q Okay, why don't --

16 A It understates the actual number of cases because any
17 defense verdicts aren't listed.

18 Q Why don't --

19 A These are lower bound on the number of cases they tried
20 that resulted in a plaintiff verdict.

21 MR. WINOGRAD: Your Honor may I approach?

22 THE COURT: Yes.

23 Q I've handed you, this is Peterson report from October
24 15th, 2004 that you relied on, correct?

25 A Correct.

1 Q And if you open up to page 5 of that report you'll see
2 table 2. You see that?

3 A I do.

4 Q And that's the table you cited in your report, right?

5 A Correct.

6 Q And that table by definition talks about plaintiff's
7 verdicts, correct?

8 A Correct.

9 Q It does not talk about trials, right?

10 A Correct.

11 Q And if you -- and in fact you are sure that some of these
12 verdicts came from trials where they were consolidated into one
13 trial, right?

14 A Correct.

15 Q And so when the cases are consolidated for trials the
16 number of cases that are consolidated into one trial can vary,
17 right?

18 A Correct.

19 Q And at times there have been hundreds consolidated into
20 one trial, right?

21 A On occasion, yes.

22 Q And you think that in the 1990s which is, includes what
23 this chart is going over, you think in the 1990s there were
24 asbestos trials with more than 1,000 claims consolidated into
25 one trial, right?

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1 A I think everything's slated. I don't know if those went
2 to verdict. I'd have to go back and check. But there were
3 some very large consolidations back in the 1990s.

4 Q Okay, so where in this chart does it support your
5 proposition that Owens Corning was doing 200 trials in any of
6 these years?

7 A The report doesn't say that. The report says they tried
8 more than 200 cases per year. So if you have 20 cases
9 consolidated in a trial, in one trial you could try 200, you
10 can try 20 cases.

11 Q Okay.

12 A So the report, the report language doesn't say 200 trials,
13 it says they tried 200 cases. And this provides support for
14 trying more than 200 cases.

15 Q So when you say that they could try more than 200 cases,
16 are you suggesting that they could try, that they could, that
17 they could complete 200 trials? Strike that. Are you
18 suggesting now that in your report by suggesting that Owens
19 Corning tried 200 cases a year, that they did not in fact have
20 200 trials in a year but rather resolved 200 cases through
21 however many trials they had?

22 A So the report I don't think I ever says how many trials
23 they had in a year. So when you say what am I suggesting in
24 that regard in the report, I don't say how many trials they had
25 in a year in the report. I say how many cases they tried. And

1 this shows me a lower bound on that because it's the number of
2 cases they tried that resulted in a plaintiff verdict.

3 Q Okay, so you're suggesting that if for example 1,000 cases
4 were consolidated into one trial, all thousands of those cases
5 would cost \$5 million each under your math, is that what you're
6 saying?

7 A No.

8 Q In your report you suggest that the cost per trial, trial
9 costs for a single case is \$5 million, right?

10 A That has been the average cost at 2017 to 2021 bill rates,
11 that was the average cost.

12 Q Okay, so I want you to assume that there are two cases,
13 case A and case B. If case A goes through trial you're
14 suggesting that the trial cost for that case, it just goes
15 through alone, is \$5 million, right?

16 A There's a range, but on average that's been the --

17 Q That's an average. And the same thing for trial B. If it
18 goes through a trial on its own the average is \$5 million,
19 correct?

20 A Correct.

21 Q What I'm asking you is if you combine A and B, you
22 consolidate them and both of those go, but there's only one
23 trial, they both get consolidated and go through are you
24 suggesting that the cost for those two on average would be \$10
25 million?

1 A It would be more than five, less than 10. And based on
2 the cost breakdown data probably around eight. You'd get a 20
3 percent savings if you were to break it down. But that's
4 looking at, if the trial gets longer. The pretrial costs don't
5 change that much because you're working up individual
6 claimants. You can work through the pieces, so there's some
7 economy there.

8 But it doesn't stay five million when you start adding
9 additional claimants.

10 Q Okay, but in your report you don't give a, you don't
11 suggest any, you don't offer any estimation of what a
12 consolidated trial would cost, correct?

13 A No, I ran a scenario to illustrate where the expenditures
14 could go if you had to try a large number of cases.

15 Q And in your math, when you come up with your range, you
16 assume for example litigate all, you assume 100 trials,
17 correct?

18 A I modeled that as 100 trials at five million a trial.

19 Q Okay. So you were assuming that none of those, that, you
20 were, in your math you were assuming none of those 100 trials
21 were consolidated, correct?

22 A You're probably taking the scenario a bit too literally.
23 But the literal scenario as written is 100 trials at five
24 million each. If you start consolidating and try 200 claimants
25 in 50 trials, consolidating them in groups of four, the

1 expenditure is probably higher.

2 But there's different ways of getting there. It's just a
3 scenario to illustrate where the expenditure could go, not to
4 be taken literally there'll be exactly 100 trials.

5 Q Okay, can you open up your report to page 34 and you'll
6 see a figure of 20 there. You there?

7 A Yes.

8 Q And again just let's take a look at litigate all. You see
9 where it says trial costs?

10 A I do.

11 Q Now you have \$1.5 billion for trial costs, right?

12 A I do.

13 Q And 1.5 billion, that's for 100 trials, correct?

14 A No, that's for 300 trials.

15 Q 100 trials per year for three years, correct?

16 A 300 trials over three years. There's different timing
17 considerations later in the report as to exactly when those
18 costs could get incurred.

19 Q Okay, but it's 300 trials per year because you have
20 assumed in litigate all that it's 100 trials per year, correct?

21 A Yes, with what you misspoke in the beginning because you
22 said 300 per year.

23 Q No, I understand that. I took your point and I tried to
24 correct myself. So you assumed 100 trials per year in litigate
25 all over a three year period totaling 300 trials, right?

1 A In, so, I've assumed 300 trials. And then the timing
2 spreads them in different ways across years under the different
3 timing scenarios.

4 Q We'll come back to that in a moment. 300 trials times \$5
5 million a trial comes to \$1.5 billion, right?

6 A 1.5 billion.

7 Q 1.5 billion. And that's the number you have on this
8 figure 20, right?

9 A Correct.

10 Q There's no discount there for any consolidation, correct?

11 A Again I didn't inflate for increasing go rates over a five
12 year period. There's lots of things you could do to make
13 changes. If you want to try to probably add more precise then
14 we could. There's uncertainty.

15 I'm characterizing a range that goes from three billion to
16 seven billion. You can get too detailed on any given component
17 of it. It doesn't help your overall accuracy.

18 Q The litigate all scenario that in your view was the
19 strategy from 2019, 2013 to 2019 in the talc litigation on
20 behalf of J&J, correct?

21 A It was the practice so there weren't settlements during
22 that period of time.

23 Q And during that period they never tried more than 10,
24 maybe 12 cases in a year, correct?

25 A It was in that neighborhood, correct.

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1 Q And we'll see these later on, but LTL itself has stated
2 that it only believes it could do a maximum of 10 trials per
3 year, correct?

4 A That's not how I understood that testimony. So I
5 understood that, for them to say it would be difficult, not
6 that it would be impossible.

7 Q So they thought it would be difficult to do more than 10,
8 correct?

9 A And they've done 12 in a year.

10 Q And they said but they can't do 20, right? Is that
11 correct?

12 A I don't view 20 as a hard constraint for any defendant.
13 But if they, they may have made that representation that they
14 can't do more than 20. I think we had this discussion too in
15 my deposition. I don't think if they were told to have 30,
16 they'd take a default judgment on 10 of them if they could get
17 a legal team in front of it.

18 Q Okay. And why don't --

19 MR. WINOGRAD: May I approach Your Honor?

20 THE COURT: Yes. Thank you.

21 Q I've handed you a demonstrative that's gone up to the
22 slide in Mr. Burian's rebuttal report. This is a quote from
23 Mr. Wuesthoff before this Court on February 14th, 2022. And he
24 says, "I believe it's very challenging to do more than 10 a
25 year because of witnesses, because of various things that you

1 need, expert testimony and such." Do you see that?

2 A I do.

3 Q And he said, "But just if you could take it to 20 and I'm
4 told you can", correct?

5 A I see that.

6 Q But you're sure and I think you just testified to this,
7 you're sure that LTL would make arguments to the Court about
8 not being able to do that many trials fairly, right?

9 A I mean defendants take positions. If they lose the
10 rulings and have more than 20 trials, they'll manage to get
11 legal teams in front of them. I haven't seen defendants taking
12 default judgments when they lose those arguments.

13 Q You've never seen a defendant take a default judgment?

14 A For losing these arguments?

15 Q You believe it may be true that having so many trials, 20,
16 30, 40, 100 trials in a year, would impair LTL's ability to
17 have a fair trial, correct?

18 A Defendants frequently make that argument.

19 Q But you believe it's true that it may be true, correct?

20 A I don't know the facts of the availability of for example
21 corporate witnesses or things along those lines to know with
22 certainty. But that appears to be their representations.

23 MR. WINOGRAD: Your Honor may I approach?

24 Q Handing you a binder. And if you would take a look,
25 there's a tab A and B.

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1 MR. WINOGRAD: Your Honor I believe you already have
2 it. They were handed out earlier. It's the same ones that we
3 handed out this morning during Dr. Mullin's -

4 THE COURT: The black binder from --

5 UNIDENTIFIED: Thank you, thank you.

6 Q It should be tabs A and B. So A was a morning, the
7 transcript was just (indiscernible) by a court reporter. And
8 if you can turn to paragraph, page 66. And turn to, look at
9 line 24. You say, "So it may be true that it impairs their
10 ability to have a fair trial", correct?

11 A Correct.

12 Q And that's, so it may be true that this would impair the
13 ability to have a fair trial, right?

14 A Correct.

15 Q And any prejudice from not being able to get, you know,
16 not getting the right witnesses or the like, that would be on
17 top of what you term the expense and burden and stress and
18 difficulty of not, of trying to put on this many trials,
19 correct?

20 A I didn't follow that question.

21 Q Sure, let me go back. You think trying 100 trials is
22 expensive, right?

23 A It's definitely expensive.

24 Q You think it's burdensome, right?

25 A I said they've represented doing more than 10 is

1 burdensome.

2 Q Okay, but in your opinion were they to have to do 100
3 trials in a year you think it would be burdensome, correct?

4 A That's always a fact specific question. So based on the
5 representations and the fact witnesses and the expert witnesses
6 they assert they can bring to bear, they're asserting that's
7 burdensome. I haven't done independent due diligence on their
8 ability to put a trial team together.

9 Q So you have no idea how many trial teams they could put
10 together to litigate these claims because you haven't done an
11 independent analysis, right?

12 A I don't know what the outer limit of that would be, no.

13 MR. WINOGRAD: May I approach Your Honor?

14 THE COURT: Yes. Thank you.

15 Q So I've handed you, this was a, again in Mr. Burian's
16 report, his rebuttal report. This is a quote by Mr. Gordon.
17 Do you know who that is?

18 A I do.

19 Q By the way, do you know who Mr. Westoff is?

20 A I don't believe I've ever met him.

21 Q And you didn't, and as of our deposition, you didn't even
22 know who he was, correct?

23 A Correct.

24 Q Mr. Gordon, you know who he is, correct?

25 A Yes.

1 Q And he says, "JJCI was very aggressive in trying cases",
2 do you see that?

3 A I do.

4 Q They had numerous trial teams throughout the country
5 trying these cases as quickly and efficient as they possibly
6 could. But about 10 trials a year is about the best that can
7 be done." You see that?

8 A I do.

9 Q But you think Mr. Gordon is wrong as well, right?

10 A I think they could try more than 10 cases a year, that's
11 correct.

12 THE COURT: Mr. Kim's having a heart attack over
13 there.

14 Q And if you look at page 9 of your expert report.

15 A Give me a moment, it's getting crowded.

16 Q I'm sorry page 4, slide 4 of your expert report. You
17 there?

18 A I am.

19 Q Can you see figure 1, basic parameters for potential tort
20 system cash flow scenarios?

21 A I do.

22 Q And then you say trial costs, you see that?

23 A I do.

24 Q And you say litigate all, 100 trial per year.

25 A Yes.

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1 Q And that's 10 times what Mr. Gordon told this Court could
2 be done, right?

3 A Correct.

4 Q Now I want to talk, you also talked about non-trial
5 litigation costs, do you recall that on your direct here today?

6 A Yes.

7 Q And prefiling LTL incurred on average \$40 million of these
8 non-trial litigation costs per quarter, right?

9 A Correct.

10 Q So that's on average 160 million per year, right?

11 A Correct.

12 Q Now if you just flip to paragraph 20 of your report. I'm
13 sorry, paragraph 69 of your report.

14 MR. WINOGRAD: We'll get it right at some point Your
15 Honor, I apologize.

16 Q Paragraph 73, you estimate in the litigate all and
17 selective high, you multiple that number, the 160 a year by 2.5
18 and you get to \$40 million a year, correct, in the non-trial
19 litigation costs?

20 A Correct.

21 Q And that's based on the assumption that the amount of
22 work, the number of cases that need to be individually worked
23 up is going to increase, correct?

24 A Yes, that corresponds to a scenario in which individual
25 cases in the MDL need to start being worked up.

1 Q And you don't know what the MDL is going to actually do,
2 correct?

3 A That's one of the reasons there's a range.

4 Q And in fact whether it's in trial or out of trial, there
5 are still constraints on lawyers and witnesses, right?

6 A Yes.

7 Q Just one more topic. You talked earlier with counsel
8 about settlement ranges, right? And your estimation of an
9 ovarian cancer average settlement cost would be?

10 A I think, just specifically that it wasn't relying on only
11 the first Lanier MSA.

12 Q Okay. So it was relying on the first Lanier MSA and then
13 you said the second MSA and then additional ones after that,
14 right?

15 A As well as other lines of analysis, yes.

16 Q And you came to the conclusion that the average was about
17 50,000 per year, right? I'm sorry, 50,000 per claim, correct?

18 A Correct.

19 Q And you also estimated the average value in the Imerys
20 case, right?

21 A Correct.

22 Q And there you only had the Lanier settlement and you
23 didn't have the first Lanier settlement, you didn't have the
24 second Lanier settlement or other settlements after that,
25 right?

1 A That's correct.

2 Q And your estimate in Imerys was the exact same 50,000 per
3 claim, right?

4 A I said there was the comparability analysis but yes, the
5 subsequent settlements affirmed and strengthen the opinion that
6 50,000 was correct.

7 Q And by the way the settlement in Lanier that you relied
8 on, that settlement excluded non-ovarian gynecological cancers,
9 right? They didn't qualify for any money in settlement,
10 correct?

11 A You had a set of qualifying cancers, that's correct.

12 Q And one of those qualifications required that it, it
13 eliminated from qualification non-ovarian gynecological
14 cancers, correct?

15 A I'd have to go look at the exact terms, but it definitely
16 had a diagnostic restriction.

17 Q If you go to your report at page 16, note 35. You
18 actually cited the qualifications for Lanier, that first Lanier
19 MSA, correct?

20 A Correct.

21 Q And if you look in that footnote you'll see that you need
22 a product use affidavit, that's number 2. And then number 3
23 and 4 require medical records. And then if you look at number
24 3 it requires epithelial ovarian cancer (borderline ovarian
25 tumors and/or cancer shall not satisfy this criteria), right?

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1 A Correct.

2 Q But you're not a medical doctor, right?

3 A I am not.

4 Q But to you it sounds there like cervical cancer would not
5 qualify in the Lanier settlement, right?

6 UNIDENTIFIED: Object to foundation Your Honor.

7 THE COURT: Sustained.

8 MR. WINOGRAD: Nothing further Your Honor.

9 UNIDENTIFIED: Your Honor, I just have a very few
10 questions. And I will hold for Mr. -- and Mr. Ruckdeschel.

11 CROSS-EXAMINATION

12 BY MR. RUCKDESCHEL:

13 Q Good afternoon Dr. Mullin.

14 A Good afternoon.

15 Q All right, I'm going to try and move very quickly through
16 this. You're an expert in U.S. bankruptcy, we've established
17 that, yes?

18 A I was retained and filed a report in that bankruptcy.

19 Q And you were truthful when you gave your opinions in the
20 MRS report.

21 A Correct.

22 Q And you relied on your MRS in formulating your opinions in
23 this case.

24 A I do make reference to it, yes.

25 Q Okay. Now you've reviewed all of the master settlement

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1 agreements that Johnson & Johnson and JJCI entered into prior
2 to filing the first bankruptcy, yes?

3 A Yes, I believe I have a copy of each of those.

4 Q All right. And those are in your reliance materials in
5 this case. And you relied on them in formulating your opinions
6 such as footnote 35 of your report where you talk about the
7 Lanier master settlement?

8 A Yes.

9 Q And all of the master settlement agreements that you
10 reviewed had criteria for what claims would qualify, correct?

11 A correct.

12 Q And in the ovarian cancer master settlement agreements
13 there was always a requirement that they have a definitive
14 diagnosis of epithelial ovarian cancer. That's how it was
15 worked in Lanier, correct?

16 A That is how it's worded in Lanier.

17 Q All right. And then there were some that a subset of
18 epithelial ovarian cancers only. Those were the serous
19 carcinomas in like the Cheek (phonetic) and the Gori law firm.
20 Do you recall that?

21 A I'd have to go look at the specifics.

22 Q Can we agree they say what they say?

23 A We can always agree on that.

24 MR. RUCKDESCHEL: Then I'm going to move all of the
25 master settlement agreements into evidence and we'll work out

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1 the details with counsel and the record will be clear. So we
2 can move on.

3 MR. JONAS: Your Honor, objection as reserved, to
4 moving in all of his reliance materials and the relevance
5 thereof.

6 Q All right, we talked in your deposition, you assumed that
7 there are somewhere between 80,000 and 100,000 ovarian cancer
8 claims pending now?

9 A Yes.

10 Q All right. And the 80,000, if we look at your report,
11 when you attempted to do any analysis of the 55,000 claims
12 represented by firms that have filed PSAs and the pending
13 claims and figure out what kind of overlap it was, the 40,000
14 or so pending claims. You said there are at least 80,000,
15 right. And that was as definitive as you could be.

16 A Correct, I don't have the data to do a real definitive
17 match.

18 Q Yeah, and you recognize that in your report. The closest
19 you could get in terms of a hard number from looking at the
20 data was 80,000 or more.

21 A Even to 95,000 if you started taking 55,000 plus 40,000.

22 Q Right. But you acknowledge there was overlap between the,
23 for example the members of the PSA signing firms and the folks
24 that had cases in the MDL.

25 A There appears to be a strong possibility of that. So I

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1 didn't, the upper end counts all of them. But there appears to
2 be a strong possibility based on name matching. But you don't
3 have Social Security numbers or the other things to affirm that
4 they're definitively duplicates. But it does appear that
5 there's duplication.

6 Q All right, and for example Mr. Onder is, has a lot of
7 cases in the MDL, correct?

8 A I don't know accounts by lawyer.

9 Q All right. Did you hear Mr. Onder's testimony?

10 A No.

11 Q Okay, great. Now you treat all, so when you do your
12 estimation of how much the ovarian cancer cases are going to
13 cost in the various scenarios you look at, you use 100,000.

14 A For the stress test.

15 Q You use that in your evaluation of the cash flow test as
16 well.

17 A 100,000?

18 Q I'm sorry, the cash flow is 55,000, right? You're using
19 all the PSA folks getting settled.

20 A Sorry? In value or claim count?

21 Q Let's stick with, let's stick with the claim count for
22 now.

23 A Okay.

24 Q When you do the aggregate value you pick 100,000 as the
25 number of currently pending ovarian cancer claims.

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1 A On the high end, correct.

2 Q Right. But that's the number that you plug in when you
3 calculate the six point, the six billion bucks or whatever it
4 is that you say that net aggregate value is, right? The 5.6.

5 A 5.6 billion.

6 Q All right. So that's based on the 100,000 assumption.

7 A Correct.

8 Q You talk about a range but when you crunch the numbers you
9 use the 100,000.

10 A For the high end, correct.

11 Q Yes, all right. And you don't give the low end?

12 A I do a scenario at 80,000.

13 Q Do you run the numbers at 80,000?

14 A Yes, that's the middle scenario for the indemnity
15 expenditures.

16 Q Okay, there you go. And with respect to those 100,000,
17 you assume that 64 percent of them will get paid in the court
18 system.

19 A I, so in that place the only, I'm taking the pay rate that
20 came out of the Lanier settlement.

21 Q Right.

22 A As the only settlement where you can do that calculation
23 at the moment. So it's the sole data point we have, having a
24 64 percent pay rate.

25 Q Right.

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1 A So I have used that pay rate for the remaining claims,
2 that's correct.

3 Q Right. And we know from what we've looked at with Mr.
4 Linear's settlement that all of those clients had epithelial, a
5 definitive diagnosis epithelial ovarian cancer in order to get
6 paid.

7 A The, correct. The presumption is that they actually
8 satisfied the criteria.

9 Q All right. And --

10 MR. RUCKDESCHEL: May I approach Your Honor?

11 THE COURT: Yes.

12 Q This is the Linear master settlement agreement in December
13 2020. I'd like you to look at the second page, recitals (a).
14 All right, now you see here in recitals (a) it says each of the
15 claimants identified in Exhibits A and B has asserted a claim
16 against J&J alleging that he or she has developed and been
17 diagnosed with epithelial ovarian cancer resulting from use
18 and/or exposure to talc products, right?

19 A I see that.

20 Q Okay. And then (b) says the parties have conducted a
21 thorough examination and investigation into the facts and all
22 related claims, blah, blah, blah, right?

23 A Blah, blah, blah?

24 Q Yeah, it goes on.

25 A Yes, it does.

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1 Q All right. So what we know is that not only to get paid
2 would they have to have ovarian, epithelial ovarian cancer and
3 a definitive diagnosis of it, but every one of these people was
4 alleging it, whether they got paid or not. That's what it
5 says, right?

6 A That's what recital (a) says.

7 Q All right. And you don't have any evidence that any of
8 Lanier's clients at this time of settlement had been diagnosed
9 with uterine edometrial cervical cancer?

10 A At the time of the settlement?

11 Q Yeah.

12 A I don't have independent data that says what their
13 diagnosis was.

14 Q And you didn't have that data about the mix of claims that
15 are pending in the MDL.

16 A We had limited information on the specific medical
17 impairment.

18 Q And you know acknowledged to Mr. Winograd in your
19 testimony and your deposition that you don't have knowledge
20 sufficient to allow you to look at the 80,000 to 100,000
21 current claims and figure out how many are epithelial ovarian
22 cancer, how many are uterine, how many are cervical? You just
23 don't have that data.

24 A That data's not available.

25 Q All right. So when you calculate the values, you use the

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1 50,000 value for all gynecological cancers whether they're
2 uterine or ovarian or cervical.

3 A I assume the qualification rate would be similar to the
4 Lanier settlement. So 36 percent go to zero. Those don't
5 qualify. And of ones that qualify, they average the 50,000 per
6 claim.

7 Q And the 36 percent comes from the Lanier clients who
8 believe they had epithelial ovarian cancer and nevertheless
9 didn't get paid, right? We just went through that.

10 A There's a recitation here. There is the census forms.
11 And the information on the Lanier claimants in the census
12 forms, what is present, doesn't look materially different from
13 the other inventories that are on the MDL.

14 Now they don't get specific about the disease. You can
15 look at a limited set of information.

16 Q You use the \$50,000 number for the value for all of the
17 claims that are currently pending. And then you adjust it by
18 how many are going to qualify for payment by using the Lanier
19 qualification rate.

20 A Correct.

21 Q All right. And you acknowledged that, in your deposition,
22 that you don't have data to allow you to determine how many
23 ovarian, how many, strike that. You don't know whether Lanier
24 ever signed up anybody other than ovarian cancer client,
25 correct? You don't know?

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1 A All we know is that 36 percent of them don't satisfy. We
2 don't know why.

3 Q You don't know, you don't know that Mr. Lanier has ever
4 represented somebody alleging a uterine cancer claim?

5 A I don't have that data.

6 Q Or a cervical cancer claim, right?

7 A Don't have that data.

8 Q All you know is that for his clients that alleged ovarian
9 cancer, only 64 percent of them could meet the other criteria
10 and followed through, right?

11 A We see 64 percent got paid under the criteria.

12 Q Yeah, right. And you acknowledged to me in your
13 deposition that you don't know whether the 36 percent that
14 didn't get paid just dropped out and didn't respond or whether
15 they didn't have the right disease or couldn't meet the
16 exposure criteria. That you don't know why they didn't
17 qualify?

18 A For the majority that's correct. Because the majority
19 were just withdrawn. They weren't submitted without a reason
20 given as to why. The minority were submitted audited by the
21 defendant's side and then rejected.

22 So the small minority where there's a record, but the
23 majority they were just not submitted and you don't know for
24 what reason.

25 Q Right. So let's do the math, all right. When you do the

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1 aggregate value, you take 100,000 claims, you multiply it by
2 \$50,000 a claim. And you end up with the aggregate value for
3 the entire 100,000.

4 A No.

5 Q That's just the first step, right? And then you multiply
6 that by .64 as to how many of them get paid, is that right?

7 A I don't view those as steps because, if he's going to get
8 paid you usually do first and then how much they get paid
9 second.

10 Q All right, well okay, fine. So you take 100,000. You
11 multiply it by .64 and then you multiply that by 50,000.

12 A Correct, at the high end, for the high end of the
13 forecast. That's what's being done.

14 Q Okay. And so Mr., just to break this out, included in
15 that would be the, all 55,000 of the claims that are
16 represented by people that signed PSAs, correct?

17 A You can think of it that way. You can think it's the
18 100,000 claims. Presumably there's some claims for people who
19 didn't sign PSAs that they also are now representing that they
20 weren't as of October 2021.

21 So there's claims outside of depending, the 40,000 plus
22 the 55,000.

23 Q Right.

24 A So I've modeled it as 100,000 at the high end, inclusive
25 of all those claims.

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1 Q Sir my question was included in the 100,000 are the 55,000
2 represented by the folks that signed PSAs.

3 A It's not that explicit. So you could think of it as that
4 plus 5,000 from all the other lawyers. You could think about
5 it as 45,000 from them and 15,000 from all the other lawyers
6 that aren't signing plan support agreements where we don't have
7 a count for how many claims they've acquired or now represent
8 that weren't filed against the Debtor as of its 2021 petition
9 date. Because the 40,000, those that were filed on the docket
10 as of the October petition date back in 2021. So the non-PSA
11 firms aren't stagnate either. They presumably have more
12 claims, I just don't have a count for them.

13 Q But you're including all the 55,000 that you know of as
14 current claims, yes?

15 A As current claims, yes.

16 Q That's all I'm asking, right. And then when you do your
17 present value of the entire, current and future, you include
18 the assumption that there are 100,000 present claims, right?

19 A Correct.

20 Q All right. And you value them all at \$50,000?

21 A Again, no. There's a dismissal rate. So of the ones that
22 get paid, they get paid 50,000. The ones that don't get paid
23 are zero. So I'm not valuing all of them at 50,000.

24 Q Right. But the, you don't -- that's fine. Okay, so now
25 let's talk about the cash flow analysis. You do three

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1 scenarios, one where they litigate all, one where they
2 selectively litigate and they settle a smaller number of claims
3 and one where they selectively litigate and they settle more
4 claims, yes?

5 A Correct.

6 Q All right. And I'm going to call the selective litigate
7 and lower number of settlements scenario 2 because that's where
8 it appears in the chart And settle more claims, scenario 3,
9 okay?

10 A Okay.

11 Q All right. In scenario 2 you assume that in the first
12 three years after returning to the tort system, LTL and J&J
13 will settle 75 percent of the claims represented by law firms
14 with PSAs, correct?

15 A I believe that's correct.

16 Q It's on page 4.

17 THE COURT: I'm sorry, what page?

18 MR. RUCKDESCHEL: Four, Your Honor.

19 Q So in scenario 2, 75 percent of the 55,000 claims for
20 firms represented with PSAs settle in the first three years,
21 correct?

22 A Correct.

23 Q And then 64 percent of those get paid under your
24 assumption.

25 A Correct.

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1 Q Okay. And then in figure, in scenario 3, you assume that
2 100 percent of the claimants represented by law firms with PSAs
3 settle in the first three years. And again 64 percent of those
4 get paid.

5 A Correct.

6 Q And the payment amount that you assume for the payment
7 people there is \$50,000.

8 A Correct.

9 Q And you don't distinguish by disease.

10 A There's no data to do that, no. So no I did not.

11 Q All right. And you're aware from looking at the master
12 settlement agreements that J&J entered in the tort system that
13 prior to enter bankruptcy, J&J never settled any claims that
14 were not epithelial ovarian cancer claims.

15 A Again I don't have all the terms of each of the master
16 settlement agreements memorized. But they each specify exactly
17 what's a qualifying disease.

18 Q And you agree what they say? They say what they say.

19 A Correct.

20 Q All right. And if that's the case then we have a data
21 point for potential value of those claims from the tort system
22 history of zero.

23 A To the degree those claims were included and got releases
24 for zero, then yes.

25 Q All right. And if they never got paid in the tort system

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1 you have no basis to use any historical data other than zero,
2 correct?

3 A If that's been dismissed, I don't have a basis to put zero
4 on them. So there's a question whether they are resolved --

5 Q So you just have a big question mark?

6 A So they're, to the degree they have value presumably
7 they're not as valuable as the ones that are being paid and
8 liquidated through the settlements.

9 Q All right. What is the plan that's currently pending
10 before the Court value uterine cancer cases then?

11 A That was updated a day or two ago. It doesn't have a,
12 maybe it has a specific dollar value. I'd have to go look.

13 Q All right. If I represent to you that Section 5.3.3 gives
14 them a value of \$1,000, does that sound familiar to what you
15 reviewed?

16 A I remember some things are \$500, some things are \$1,000,
17 other things are on points. I don't --

18 Q Okay.

19 A I know 1,000's in there. I couldn't tell you exactly
20 which ones they were.

21 Q Fair enough. All right, well then we're going to let His
22 Honor look at that in briefing. In terms of your aggregate
23 analysis sir when you're looking at, well lets look at the
24 PSAs, the cash flow analysis. You told me in your deposition
25 you did not ask LTL or Johnson & Johnson and they did not

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1 provide to you any information about what they would have done
2 had they returned to the tort system rather than refiling
3 bankruptcy, in terms of settling cases, correct?

4 A That's correct.

5 Q They didn't tell you, you didn't ask them look, I got
6 these three scenarios, which one would you have done, right?

7 A Correct.

8 Q And you didn't ask them, hey, are you going to change your
9 historical practice and start paying ovarian cancer, uterine
10 cancer cases, right?

11 A Correct.

12 Q And nobody ever came and told you, hey, we're going to
13 change our practice. We're going to start paying cervical
14 cancers, right?

15 A Correct.

16 Q Okay. So you have no information that a uterine case or a
17 cervical cancer case has ever gotten a penny in settlement in
18 the tort system from J&J, correct?

19 A I haven't seen the individual claimants that got paid
20 under the MSA. So I have, to the degree one has been, I have
21 no knowledge of it.

22 Q All right. And if the MSAs all say we only pay on
23 definitive epithelial cervical cancer or ovarian cancers,
24 that's what they say, right?

25 A Correct.

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1 Q Okay. And with respect to, to the extender that Mr. Onder
2 has 21,000 cases included in the 55,000 that you assume in
3 scenario 2 and 3 on page 4 are going to resolve here, 75
4 percent of 100 percent, and he has 9,000 uterine cancer cases,
5 you're applying a value of \$50,000 to those uterine cancer
6 cases. And the only adjustment you have is 36 percent of
7 Lanier's ovarian cases didn't get paid, right?

8 A So I have two adjustments. That's one. The other is
9 there's a range as to how many pending claims there are between
10 80,000 and 100,000. So on the high scenario it does treat
11 100,000 pending claims and 64 percent of them getting paid, so
12 64,000 paid claims.

13 And now your scenario it says 80,000 pending claims. Why
14 the other 15,000 go away, it's agnostic about it. It's saying
15 at low end let's assume there's only 80,000, 60,000 of those
16 get resolved. Now you're down to, if 80,000 goes to 60,000 and
17 then you take two thirds of that. So you're down to about
18 40,000 paid claims.

19 Q You've gone back to aggregate value. I'm asking about the
20 cash flow analysis on page 4. On page 4 in scenario 2 you say
21 75 percent of the claimants represented by law firms with PSAs
22 are going to settle their claims with Johnson & Johnson in the
23 first three years back in the tort system, right?

24 A Correct.

25 Q And currently the number you have in your report for the

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1 number of claimants with PSAs, firms with PSAs is 55,000,
2 right?

3 A Correct.

4 Q All right. And Mr. Onder's 21,000 cases, if I'm
5 representing to you correctly that he is a PSA firm, are
6 included in that 55,000, correct?

7 A Correct.

8 Q All right. And in scenario 3 you assume all 100 percent
9 of them, adjusted for 64 percent pay, are going to get paid,
10 settled in the tort system in the first three years, right?

11 A Right, 64 percent of them will get settled for payment.

12 Q And the value you give to that is 50,000 a claim?

13 A Correct.

14 Q And you don't know whether of the 55,000, 80 percent of
15 them are ovarian cancers, 50 percent of them ovarian cancers or
16 30 percent of them are ovarian cancers. You just don't have
17 that data.

18 A That data's not available.

19 Q Thank you.

20 THE COURT: Uh oh, he's bringing a box.

21 MR. MAIMON: Hopefully we won't need the box.

22 CROSS-EXAMINATION

23 BY MR. MAIMON:

24 Q Dr. Mullin, Mr. Ruckdeschel was talking to you about
25 scenarios 2 and 3, do you recall that?

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1 A Yes.

2 Q I'm going to talk to you about scenario 1 just so we know
3 that, okay?

4 MR. JONAS: Your Honor before we start, these two
5 gentlemen represent the same client.

6 MR. MAIMON: No.

7 MR. JONAS: Mr. Ruckdeschel and Mr. Maimon both
8 represent Mr. Croach if memory serves.

9 MR. MAIMON: No, no.

10 MR. JONAS: Do (indiscernible) pleadings for Mr.
11 Croach?

12 MR. MAIMON: I do.

13 MR. JONAS: Mr. Ruckdeschel do you have
14 (indiscernible) to Mr. Croach?

15 MR. MAIMON: And I've appeared on behalf of the
16 Levitt (phonetic) family as well as the Schmitz (phonetic)
17 family who have wrongful death claims against Johnson & Johnson
18 and submitted pleadings on their behalf as well.

19 MR. JONAS: In this bankruptcy.

20 MR. MAIMON: Yes, sir, yes, sir.

21 MR. JONAS: It's up to you Your Honor.

22 THE COURT: It was up to you, so.

23 BY MR. MAIMON:

24 Q Okay, do you have in mind that I'm going to talk to you
25 about scenario number 1?

1 A Yes.

2 Q That's the litigate all, right?

3 A Correct.

4 Q And you said in your deposition and you actually said in
5 your report that a litigate all strategy would not be
6 unreasonable, true?

7 A Correct.

8 Q Okay. But again you didn't ask anyone from J&J what their
9 strategy would be, correct?

10 A Correct.

11 Q You didn't ask the lawyers who retained you, say help me
12 out a little bit. Tell me which way you think it will go if
13 you go back into the tort system, right?

14 A I've been doing this for a long time and I've learned to
15 not put a lot of weight on what the lawyers tell me and what
16 they might do when they go back in the tort system. I look at
17 the economic incentives that are in play and the forces.

18 Q And --

19 A And what they've actually done in the past when forced
20 with those same decision. And as an economist relying on the
21 actual choices people make to see how they would react to a set
22 of economic pressures is typically more reliable than a
23 representation they may give you of what they might do in the
24 future.

25 Q I'm going to ask you to look --

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1 A As they did in the past.

2 Q Sure. I'm going to ask you to look at this clip and see
3 if that is consistent with what you consider to be a reasonable
4 approach when J&J goes back in the tort system, okay?

5 A Okay.

6 Q Go ahead.

7 MR. JONAS: Your Honor.

8 THE COURT: Yes.

9 MR. JONAS: Can we have an instruction as to what
10 this may or may not be.

11 MR. MAIMON: I'd like you to assume that this is a
12 presentation at a mass tort seminar on June 26th by a Susan
13 Sharko the longest standing asbestos, longest standing defense
14 lawyer for J&J according to the testimony.

15 THE COURT: Counsel.

16 MR. JONAS: Your Honor I object. We have no way of
17 knowing what this is, when it was done. We don't even have a
18 date.

19 MR. MAIMON: We do, it's right down there. 6/26 mass
20 tort seminar.

21 MR. JONAS: Okay.

22 THE COURT: He can show him anything and ask an
23 opinion.

24 (Recording paused from 4:29:50 p.m. to 4:30:00 p.m.)

25 (Video played from 4:30:10 p.m. to 4:31:11 p.m.)

1 Q That would be consistent with your litigate all scenario,
2 correct?

3 A That's her personal opinion, it seems to be consistent
4 with that scenario.

5 Q Okay, so let's talk a little bit about that. You, for
6 that, you as we said have assumed 100 trials per year, correct?

7 A In the formal modelings 100 trials per year.

8 Q And you base that on the experience that you saw in the
9 report of 100, of 200 verdicts by Owens Corning, correct? In
10 the mid 1990s.

11 A I have a broader experience than that. That is the
12 citation I gave as an example in support of it, but it's not
13 the sole thing in my experience that led me to model that
14 scenario.

15 Q Understood. How many states in the union was Owens
16 Corning litigated in?

17 A Owens Corning, I'd have to go back and look in the 1990s.
18 I don't remember the count of states.

19 Q And the more states that they were litigating in, the more
20 opportunities there were for courts to have trials, correct?

21 A We would have more courtrooms available, that's correct.

22 Q Okay. And with regard to asbestos litigation in general
23 that you reference in your report, how many states are asbestos
24 cases being tried in every year?

25 A That's become a smaller set through time, so I haven't

1 gone back and refreshed my memory in the '90s. So there's,
2 Texas and Mississippi were common in the '90s. You don't
3 really see trials in Mississippi for asbestos cases like you
4 did in the '90s. So that's, that has changed through time.

5 Q But again you don't know how many states currently
6 asbestos cases are being tried in in the union, correct?

7 A I haven't done a recent tabulation. It's in the 10s.

8 Q Okay. So now you assume, by assuming 100 trials per year,
9 over three years you have 300 trials. And a \$5 million per
10 trial you come up with your \$1.5 billion number, right?

11 A Correct.

12 Q Now do you think based on the information that you've been
13 given by Johnson & Johnson that it's fair to say that the
14 ovarian cancer claims primarily are located in four courts in
15 the country, the District Court here in New Jersey where the
16 MDL is that Ms. Sharko was talking about, the MDL Court in
17 Atlantic County in New Jersey which has the MDL coordinated
18 litigation in New Jersey, the California coordinated docket and
19 the Missouri coordinated docket. Is that consistent with what
20 your understanding is of where most of the ovarian cancer cases
21 are pending?

22 A So of the ones that have actually been filed, the vast
23 majority are on the Federal MDL.

24 Q Okay.

25 A It's only been about a few thousand of them.

1 Q Now --

2 A Of the ones that haven't been filed, they, we don't know
3 where they would file if you returned to the tort system.

4 Q And with regard, let's take the MDL as an example. Were
5 you aware that prior to the filing of this bankruptcy, four
6 cases had been designated to be tried as Bellwether cases?

7 A I was aware that there was a Bellwether process. I
8 didn't, I don't remember the exact number.

9 Q And if this case was dismissed it would be a fair
10 assumption from an economic point of view that that process
11 would continue in the MDL court, correct?

12 A My understanding is there's a new judge, so I don't
13 presume the new judge will necessarily follow the direction the
14 prior judges had, but --

15 Q So --

16 A It may. The judge may.

17 Q So you really can't say with any type of certainty when
18 the first trial would be held in the MDL after the dismissal of
19 this case, can you?

20 A No, it's one of the reasons there's a broad range.

21 Q And if Judge Shipp who's now the Judge in charge of the
22 MDL follows what Judge Wolfson did and takes a very discrete
23 number of ovarian cancer cases and tries them as Bellwethers,
24 you don't have any idea of how many trials the MDL court could
25 have in that one year, correct?

1 A The MDL in isolation?

2 Q Yeah, where the vast majority of claims are filed.

3 A You could get through four cases pretty quickly. There's
4 only MDLs that have tried more than four cases in a year. So
5 if they're going to look at four, they could get through the
6 four cases relatively quickly.

7 Q Okay, how many days?

8 A I'm not thinking about it in terms of days. Could you, in
9 a year or two years, get through them, yes.

10 Q Judge Kaplan gave us four days for this hearing because
11 he's a busy man and he's got a lot to do. Do you know what
12 Judge Shipp's docket is to allow him to try multiple trials
13 during a year?

14 A Okay, I didn't realize you were constraining the trials to
15 have to be performed in that one courtroom, because that's not
16 always what's been done in MDLs.

17 Q It's not, but do you know what Judge Shipp's availability
18 is?

19 A I do not.

20 Q Okay. And do you know what the Judge in Atlantic County
21 has as far as his ability to try multiple trials in a year?

22 A No.

23 Q Do you know what the California coordinated docket has and
24 its ability?

25 A No.

1 Q How about the Missouri coordinated docket?

2 A No.

3 Q So you have absolutely no basis to say with reasonable
4 certainty that there will likely be 100 trials per year.
5 That's just a number that you've hypothesized, fair?

6 A There is a range. I was looking for a number at the
7 higher end of the range. The plaintiffs have many options at
8 this point. So if none of those are moving, the 50,000 or
9 however many claims there turns out to be that aren't file
10 anywhere, can choose to file in a different location.

11 Q Okay.

12 A There are options besides just going to these four
13 locations.

14 Q How long did it take the MDL to get up to speed on the
15 ovarian cancer litigation before it was ready to actually set
16 its first case down for trial?

17 A I don't remember the exact information.

18 Q I'm sorry. You have no idea how long it would take a
19 judge in a District or in a Court that never had a talc ovarian
20 cancer case to get ready and up to speed to be ready to try a
21 single trial let alone multiple trials, true?

22 A So our focus here seems to be all on the ovarian cancer
23 claims and not the Mesothelioma claims.

24 Q We'll get to the Mesotheliomas in a moment.

25 A Would be, the count of claims that could go to trial is

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1 the two combined. So I don't want to create the impression that
2 my testimony is we'll have 100 ovarian cancer claims and zero
3 Mesothelioma claims. That's not. There's many courts around
4 the country that are already up to speed to try Mesothelioma
5 claims.

6 As is illustrated by asbestos litigation generally, the
7 plaintiffs' do file those all around the country, in the venues
8 where they can get to trial relatively quickly. So there's an
9 ability to have a large number of Mesothelioma claims. There's
10 much more uncertainty about the number ovarian cancer claims.

11 And as I said in my deposition, if you want to look at the
12 low end, it very well may be 15 Mesothelioma claims and five
13 ovarian cancer claims.

14 Q Okay.

15 A And that's it on the ovarian cancer claim side.

16 Q You done?

17 A Yes.

18 Q Where are there currently the most number of pending
19 mesothelioma claims? What state? I'll give you a hint.

20 A Well, they're largely in New York, New Jersey, and
21 pending?

22 Q Pending? From your report. I'll give you a hint.

23 New Jersey, right?

24 A I see you pointing at New Jersey.

25 Q Fair?

1 A I don't remember the exact number. I know a couple states
2 had material numbers.

3 Q How many judges in the state of New Jersey try asbestos
4 cases?

5 A I don't know.

6 Q I'd like you to assume there's one. The Judge in
7 Middlesex County who's been assigned them by our Supreme Court
8 Justice, Justice Rabner.

9 How many are the most trials in a year that have been
10 tried in Middlesex County in the last 10 years?

11 A I don't know the answer to that specific of a question.

12 Q So that you have no idea for the most populous as far as
13 pending cases, you have no idea how many total cases that court
14 tries in a year, let alone how many of the subset of Johnson
15 and Johnson trials can happen, right?

16 A For a particular jurisdiction like that, no.

17 Q Okay. Let's move on.

18 You put your litigate-all scenario and I've boxed it in
19 red. Do you see that?

20 A I do.

21 Q Okay. And we've talked about the number of trials. I'd
22 like now to talk to you about the trial costs, okay?

23 A Yes.

24 Q You talked to us, you said that the average is \$5 million
25 per case. Is that right?

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1 A Correct.

2 Q Okay. Now, you had in your reliance materials a chart of
3 the talc trial costs, right?

4 A Correct.

5 Q You had it in an Excel spreadsheet form, correct?

6 A That is highly likely.

7 Q Okay. What I did is I summed up horizontally for each
8 case what the total cost that you accounted for are.

9 Do you see that?

10 A Yes.

11 Q Okay. And what I've done with the highlighting is if it's
12 a mesothelioma case, I put it in yellow, and if it's an ovarian
13 cancer case, I put it in pink.

14 Do you see that?

15 A I do.

16 Q Okay. And it is true, is it not that, forget about the --
17 wait a minute.

18 On the second column there, or the third column is total
19 fees. Do you see that?

20 A Yes.

21 Q That is the time as reported in the summaries that you
22 looked at for the charge of the attorneys and staff at trial,
23 right?

24 A Correct.

25 Q And then, on the final one in your chart, are the

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1 expenses, the trial were actually the case expenses, right?

2 A Yes.

3 Q Okay. And in the middle you have pre-trial costs as well
4 as post-trial costs, as well as appeal costs, right?

5 A Yes.

6 Q When you talked about the average being 5 million, you did
7 not include the three middle columns, pre-trial, post-trial,
8 and appeals, right?

9 You were saying trial, which would be total fees and
10 expenses, right?

11 A I believe it's a breakdown, a summary of all of them.

12 Q Okay. But when you told the Court that the average trial
13 cost is \$5 million, you did not include that pre-trial cost,
14 right? Because you said there's also pre-trial costs.

15 A The trial itself averages less than 5 million. The total
16 process is at 5 million. The reality is this understates that
17 total cost as you can see. We know that these records are
18 incomplete. There's footnotes to the report to this effect,
19 but you can see it, for example, by looking at the fourth row
20 for Berg (phonetic), there is zero pretrial cost listed.

21 It's not that there was nothing done, it's just the time
22 records weren't categorized where that could be pulled out. So
23 we're understating the actual costs incurred and we still get
24 an average of 5 million, but it's the fees that are tracked to
25 that case and its expenses within two months of trial.

1 Q You mentioned time records. You didn't actually see real
2 time records, did you?

3 A No. We got summaries from counsel.

4 Q So the attorneys prepared summaries for you, and that's
5 what you relied on for your chart, correct?

6 A Correct.

7 Q Okay. Let's just take a look at the last column, the one
8 that I put together summing it up with my Excel excellence.

9 It's true is it not that 29 out of the 47 trials that you
10 accounted for had total costs of less than \$5 million?

11 A It may be, but you really can't do that entirely from this
12 chart. As I said, this chart understates total costs for many
13 of these cases.

14 Q All I have is the chart that you prepared, sir, okay?

15 A And pay attention to the footnotes that explain what it
16 represents. Because when you have no pretrial costs associated
17 with a claim, it's not because no one did anything pretrial.
18 It's because counsel couldn't break those out for me and
19 provide me that number. And so this chart treats that as
20 though it's a zero.

21 Q Understood.

22 A And the report is clear that this is causing us to
23 understate the actual costs of trying these cases. So it's
24 understating that. So you can't look at that row for Berg,
25 take it all the way across and get a number just under a

1 million dollars and say the total cost of that case was just
2 under a million to try it. We know that's incomplete.

3 Q But you don't know how much more it is, do you?

4 A No. That's what the caveats in the report are, that the 5
5 million is understating the actual cost on average of taking a
6 claim all the way through trial.

7 Q Right. For the majority of the cases where you have total
8 costs on this chart, over \$5 million are mesothelioma trials,
9 correct?

10 A Well, the majority of the cases are mesothelioma, so I
11 would expect that to be true.

12 Q Well, not only are the majority of the trials
13 mesothelioma, but the majority of those -- all the cases with
14 costs over \$5 million are mesothelioma cases, correct?

15 A As I said, I didn't do the tabulation that way, so I don't
16 have that at my fingertips to answer.

17 Q But what this chart does is this takes the averages,
18 including the mesothelioma cases, and applies them to the
19 ovarian cancer cases, correct, as an average? Yes or no?

20 A So it's taking an average that's mixing both mesothelioma
21 and ovarian cancer cases and it's applying that to the mixture,
22 which would include both mesothelioma and ovarian cases in the
23 future.

24 Q Right. And what's the percentage of pending cases,
25 ovarian cancer versus mesothelioma? If we want to know if they

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1 have to try, litigate, try every case, how many ovarian cancer
2 cases are they going to have for every one mesothelioma trial?

3 A There's many more pending claims. As the history tells
4 you, that's not always how the trial dockets work out.

5 Q I understand that. But if we're looking towards the
6 future, we have a lot more ovarian cancer trials than we have
7 mesothelioma trials if they move to trial and judges say, I
8 want to clear my docket, like you've assumed, right?

9 A No. I've assumed that both of those would saturate the
10 docket, in essence. So the number of claims you have when you
11 have fifty, 100,000 thousand claims, whether you settle half of
12 them and only have 50,000 left or 100,000 doesn't really change
13 the trial capacity for the next three years. So I really
14 assume that they both could -- they have enough claims to
15 potentially saturate the trial dates that are available for
16 them.

17 Q And you don't know from the Court's point of view as far
18 as Court availability how many trials are available, correct?

19 A That's correct.

20 Q Okay. What I did here is I took out the ovarian cancer
21 cases, and I'd like to first start with three cases that you've
22 listed, the Blaze (phonetic) case, the Guise (phonetic) case,
23 and the Ingham case.

24 Do you see that?

25 A I do.

1 Q Those were cases that had consolidations, correct? And I
2 put the number of plaintiffs in the consolidation in there.

3 A Okay.

4 Q And if we take the Blaze case as an example, while the
5 total cost there was \$2.9 million, if we divide it by the three
6 plaintiffs on a per-plaintiff average, that's only 967,000 per
7 plaintiff, correct?

8 A Correct.

9 Q And the Guise case, even though we have an appeal not
10 applicable, the total cost there was 451,000, and divided by
11 three, that's 150,000, right?

12 A It's almost assuredly incomplete records.

13 Q But you don't know because you weren't given all the data,
14 correct? So you can't say with reasonable certainty how much,
15 if anything more than that it would've been, correct?

16 A I took the 5 million, caveated in the report that this is
17 missing a number of expenses. It's obvious by looking at some
18 of the cases that they're missing. Others, there's
19 uncertainty. When it costs 10 million, maybe it's still
20 missing a million or 2 million of fees. Maybe it's missing
21 nothing.

22 So there's a reason it's treated as a lower bound on the
23 costs when you look at this on average. Doing the analysis
24 claim by claim like this when you know your records aren't
25 complete can be very misleading. There's a reason I

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1 intentionally don't do things claim by claim and I'm looking at
2 more of a global average.

3 Q On the Ingham case, 22 cases, the total cost listed for
4 you was \$10 million. If I divide that by 22, I only have
5 459,000 per plaintiff, correct?

6 A Correct.

7 Q Okay. But let's forget about consolidations. The average
8 for these ovarian cancer cases was \$3.7 million, correct, per
9 trial, according to the data, right?

10 A Of the fees that they could associate with the cases,
11 that's correct.

12 Q Okay. And just the trial time, and let's take a look at a
13 few of these. The Echeverria case was one trial, \$12.7
14 million, right?

15 A Correct.

16 Q The Ingham case was 22 cases together, \$10 million.

17 A In identified fees, that's correct.

18 Q The Echeverria case lists \$5.2 million for pretrial costs,
19 right?

20 A Correct.

21 Q Did you see anything near that, anything near that on any
22 other ovarian cancer case? The next closest is Ingham of 22,
23 plaintiffs for \$3 million, right?

24 A Correct.

25 Q What were they spending on in the Echeverria case that

1 makes you think that that's indicative of what would happen in
2 the future because you're projecting from this onto the future?

3 A Again, there's a reason you're taking an average over a
4 large number of cases, and you're spreading those costs across.
5 To try to do this claim by claim and look at all the underlying
6 detailed time records, you could try to do that. It's not
7 going to materially alter the results at the end of the day.

8 Q For your \$1.5 billion for trial costs over three years, if
9 the number of trials is reduced in half, that number is reduced
10 in half, correct?

11 A If it's reduced and has to be a consolidation, no. If
12 it's reduced in half and you're just doing half as much work,
13 then yes.

14 Q In your scenario, correct?

15 A Right.

16 Q If you would've only projected 50 trials instead of 100,
17 you would've come out with 750 million instead of 1.5 billion,
18 correct?

19 A Correct.

20 Q Okay. And if the per-case average trial cost is less for
21 the trials that go forward, that will also reduce that \$2.07
22 million, which was the total aggregate for the litigate-all
23 scenario, right?

24 A The assumption necessitates the conclusion, yes.

25 Q And it will do it for every single one. Those things will

1 act synergistically, not only the number of trials reduced but
2 the cost per trial reduced will significantly reduce that
3 number, correct?

4 A If you're multiplying A by B and you decrease both A and
5 B, the product goes down, too. That's true.

6 Q Okay. So let's talk a little bit about claim values and
7 I'll move on very quickly from here.

8 You put your core mesothelioma value at 750,000 a case,
9 correct?

10 A Correct.

11 Q You acknowledged that where there is alternative or
12 contributing causes, other asbestos exposure in particular,
13 that would, in your mind, result in a discount for the
14 anticipated value of that case, true?

15 A So, no. Historically, those claims have received less
16 than 5 percent of the total money, so I modeled where the 95
17 percent of the money was and then grossed up for the remaining
18 five --

19 Q Right. But on a --

20 A -- which is a common modeling technique.

21 Q Going into the future, according to your projections, to
22 the extent that there's what I'll call mixed exposure as
23 opposed to talc only, that would be a discount in the value,
24 correct?

25 A Just as it has been in the past, yes.

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1 Q Okay. Now, I want to bring to your attention a case that
2 was tried in California by my co-counsel, Joe Satterley, in
3 which the jury allocated responsibility, 40 percent to Colgate,
4 40 percent to Johnson and Johnson, and 20 percent to Avon.

5 Do you see that? That's straight out of the court
6 opinion. Do you see that?

7 A I do.

8 Q Okay. Now, I'm just going to represent to you that
9 Colgate and Avon are talc manufacturers, okay?

10 A (No audible response)

11 Q You got that?

12 A Yes.

13 Q Are they talc only? Are they talc only or are they mixed
14 exposure, according to your scenario?

15 A Those are still talc claims.

16 Q Okay.

17 A So I mean, Colgate also made talcum powder products, so
18 it's still a talcum powder claim. There's not an alternative
19 exposure from, for example, a traditional asbestos containing
20 product.

21 Q And one of the things that Mr. Burian was critical of you
22 about is that you didn't take into account the contribution
23 from other defendants. And here, there would be a 60 percent
24 contribution from other defendants, right?

25 A The preamble I strongly disagree with, but then you had a

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1 question after the preamble. So I'm not sure --

2 Q You responded when LTL's counsel to various criticisms
3 that Mr. Burian had of you. Do you recall that?

4 A Yes.

5 Q And you went by the slide and it said, "Ascribes all talc
6 liability to LTL without allocation or apportionment of
7 liability between LTL and other defendants."

8 Do you recall that?

9 A So that's true on ovarian cancer claims. On mesothelioma
10 claims, I'm extrapolating their \$750,000 settlement value,
11 which to the degree they're also collecting money from other
12 claimants, that's not being included.

13 Q Okay. And for ovarian cancer claims, you talked to
14 Mr. Ruckdeschel about the 50,000, that's not discounted for any
15 alternative or contributing cause, correct?

16 A It's an average. So now how it gets allocated to
17 individual claimants may well do that, but the average recovery
18 and how the master settlement agreements were set up, there's
19 an allocation on the back end that at least I haven't seen yet,
20 so some claimants may get 75,000, others may get 50 --

21 Q I'm not talking about that.

22 A -- maybe 25.

23 Q I'm talking about whether or not, for instance, any of
24 Mr. Lanier's case or any of the Ferraro firm case or any of the
25 Cheek firm's case had a contributing factor other than the J&J

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1 talc product, you didn't take that into account, correct?

2 A For ovarian cancer? Yes.

3 Q For ovarian cancer. Come up with your 50,000, correct?

4 A That's correct. The vast majority name just LTL/J&J in
5 the tort system and Imerys.

6 Q And to the extent that there were other alternative
7 contributing causes that might result in a further discount,
8 correct?

9 A If you had a claimant who asserted they used almost
10 exclusively Colgate, or say Colgate 90 percent of the time, you
11 could see a discount on that individual claim.

12 Q Okay. Thank you.

13 Let's talk a little bit about values of claims. Did you
14 review the voluntary petition where Johnson and Johnson -- I'm
15 sorry. Did you -- withdrawn.

16 Did you review the voluntary petition where the chief
17 legal officer of LTL signed his name to the bankruptcy petition
18 and said that the estimated liabilities was between 1 and \$10
19 billion?

20 A No.

21 Q Okay. Let's talk about Johnson and Johnson versus JJCI
22 for just a moment. You have operated under the assumption that
23 all of the liability in following the accounting practices that
24 they've employed up until now, all of the liability finds its
25 way onto JJCI or LTL now, and there is no independent liability

1 that would contribute to the plaintiff recovery for J&J alone,
2 correct.

3 A No independent liability that wouldn't fall under an
4 indemnification agreement --

5 Q Okay.

6 A -- is what I understand.

7 Q You have not reviewed the indemnification agreements,
8 correct?

9 A I'm aware of its existence, but I wouldn't try to
10 interpret the legal document when I haven't read it.

11 Q You can just say, "correct," or you could just say, "I
12 didn't read it."

13 You didn't read it, did you?

14 A No, I didn't read it.

15 Q Okay. And you're not qualified to lend a legal opinion
16 about the enforceability or applicability of those indemnity
17 agreements, are you?

18 A No.

19 Q You just assumed for purposes of your projections that
20 those indemnity agreements bring all the liability over to LTL
21 and none of it onto Johnson and Johnson, correct?

22 A I maintain the historical practice.

23 Q Well, the historical accounting practice, right?

24 A Correct.

25 Q Okay. Because what you've ignored is the historical

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1 practice in the courts of our country. Here are two judgments
2 that were rendered here in New Jersey that have allocation
3 ascribed to both Johnson and Johnson and JJCI.

4 So for instance, in the Etheridge (phonetic) case, J&J was
5 held 80 percent liable, whereas JJCI was 20 percent liable. Do
6 you see that?

7 A Yes.

8 Q And in the McNeil case, it was the reverse. Johnson and
9 Johnson Consumer, Inc., was 80 percent and Johnson and Johnson
10 was 20 percent. Do you see that?

11 A I see most. I don't see everything on the screen because
12 there's video covering one side.

13 Q If you need, that's what's in the box.

14 A I can see enough of it. It's fine.

15 Q In the Barden case, Johnson and Johnson was held 80
16 percent responsible and JJCI 20 responsible. Do you see that?

17 A I do.

18 Q And in the Ronnie (phonetic) case, it was split 50/50,
19 right?

20 A I see that.

21 Q And you don't know -- by the way, did you know that that
22 was a single jury that made those determinations?

23 A Across these --

24 Q Four.

25 A -- four?

1 At a point in time, I may have, but I didn't carry that in
2 my head.

3 Q You don't know what factors at trial led to the jury to
4 say, we're putting X percent on this defendant versus Y percent
5 on the other defendant, do you?

6 A No.

7 Q Okay. Now, I'm not going to go into it because I don't
8 want to spend more time, but when multiple tortfeasors are in a
9 single case and the question becomes what's the liability of
10 each, there are many factors that go into that determination,
11 fair?

12 A There can be.

13 Q And as a company, or as two companies that are talking
14 about the values of cases, those companies can reasonably, from
15 an economic point of view, look to various factors to say, I
16 should be paying X and you should be paying Y, fair?

17 A The company's could talk to each other about that, yes.

18 Q And over the course of a litigation, as a litigation
19 matures and the evidence comes out and people know what juries
20 have told them, companies can make more educated guesses or
21 educated choices from an economic point of view about what they
22 really should be paying and what percentage of liability is
23 really theirs in a given case, fair?

24 A So we're talking about two independent companies with no
25 indemnification agreements?

Mullin - Cross/Maimon

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1 Q Forget about indemnification. Fair?

2 A Yes.

3 Q Okay. And one of the issues that companies who are
4 responsible in litigating and responsible towards their
5 company, responsible to their shareholders, will be cognizant
6 of is that juries take a look at the reprehensibility, the
7 relative reprehensibility of the conduct of the two companies.
8 One might be slightly at fault, but another is really, really
9 bad, and that might result in more liability being ascribed to
10 them. That's from an economic point of view, an important
11 factor to take into account, true?

12 A Corporate behavior is looked at by juries.

13 Q And you don't know, although you do know because you've
14 read some things, but, for instance, the Ingham case, the
15 Missouri courts held that Johnson and Johnson's conduct was
16 tremendously more reprehensible, deserving a higher punitive
17 damage verdict, than JJCI? You're aware of that, correct?

18 A I haven't reread it recently, so I (indiscernible) --

19 Q But you would agree with me, Dr. Mullin, that for every
20 bit of percentage, forget about indemnity, that Johnson and
21 Johnson would be responsible, LTL's share would go down
22 correspondingly?

23 A If it was determined that Johnson and Johnson was the
24 responsible party and not LTL, by simple subtraction, yes,
25 there would be a tradeoff between --

1 Q Well, it's not an either/or. It could be both and the
2 percentage can be different for each, correct? Multiple
3 tortfeasors.

4 A What?

5 Q They could both be liable, but in different percentages,
6 like the jury in the Barden and Ronnie determined, right?

7 A Correct.

8 Q Okay. And for every percent that Johnson and Johnson is
9 responsible and not LTL, your projections go down by that
10 percent, correct?

11 A There's the settlements and the settlement framework and
12 there's jury trials. Most of the money is moving through a
13 settlement framework in the -- well, most of the money actually
14 moves through the Ingham trial in this case, historically. But
15 in general, most of the cases are settling in the split of the
16 money.

17 So in a jury verdict, as we saw with the one, maybe it's
18 Colgate that goes -- if J&J goes down, maybe Colgate goes up,
19 and LTL or JJCI stays in the same place. If there's just the
20 two of them, then by construction, if one goes down a
21 percentage point and they're allocating, the other must go up.

22 Q Thank you.

23 MR. MAIMON: Those are all the questions I have, Your
24 Honor.

25 Didn't use anything in the box.

Mullin - Cross/Johnson

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1 CROSS-EXAMINATION

2 BY MS. JOHNSON:

3 Q Good afternoon, Dr. Mullin. My name is Ericka Johnson. I
4 represent the Ad Hoc Committee of State Attorneys General.

5 I wanted to ask you some questions about how you treated
6 government action claims in the balance sheet analysis that you
7 conducted.

8 In your balance sheet, you calculated net present value of
9 defending and resolving the government action claims at less
10 than \$1 billion, correct?

11 A Correct.

12 Q And that was calculated based on two components. One, the
13 settlement value and, two, the defense costs, correct?

14 A Correct.

15 Q And in calculating the settlement value, counsel
16 instructed you to assume that the settlement value of the
17 government action claims would be between \$0 and \$400 million.
18 Is that correct?

19 A That is correct.

20 Q And you followed counsel's instructions, correct?

21 A Correct.

22 Q You didn't conduct any independent analysis of what you
23 thought the value of the consumer protection claims would be,
24 correct?

25 A That's correct.

1 Q The other component to the net present value for the
2 government action claims was defense costs, right?

3 A Yes.

4 Q And J&J hasn't tried any consumer protection claim for
5 talc, historically, correct?

6 A That's correct.

7 Q And so there's no historic data for which you could rely
8 on in making your calculations, right?

9 A That is specifically this case going to trial, no.

10 Q And so instead, what you did is you looked at the historic
11 cost for a personal injury claim that LTL -- well, LTL, the
12 predecessor, LTL really, had defended in the past, correct?

13 A As informative in that there's a lot of overlapping issues
14 that would be tried.

15 Q Is that correct? That's how you, that's the data that you
16 used to calculate what --

17 A Yes.

18 Q -- the defense cost would be?

19 And specifically, what you did in Footnote 126 is take the
20 most expensive personal injury matter that LTL had ever
21 defended, which cost \$17 million, correct?

22 A Correct.

23 Q And then from that \$17 million, you added an amount to say
24 that on average it would cost \$25 million to defend the
25 consumer protection claims, correct?

Mullin - Cross/Johnson

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1 A Well, the balance sheet test was intended to, if anything,
2 overstate. And so on this, I wanted a number on the defense
3 costs that I was confident that if we had 20 states go through
4 trial at 25 million each for \$500 million, that that would be
5 ample money for handling the defense costs of that.

6 Q Okay. So --

7 A It's not supposed to set an unbiased estimate of where you
8 would be. It's more for that balance sheet test where you're
9 looking at solvency, what's a number you have a high degree of
10 confidence you'll be under.

11 Q So it's correct that you took the \$17 million and
12 increased it to 25 million to say that would be the average
13 cost to defend the consumer protection claims for purposes of
14 your analysis, right?

15 A Correct.

16 Q And then you assumed that, at most, 20 states would
17 litigate, or government units would litigate those claims,
18 correct?

19 A Correct.

20 Q And so you took the 25 million, multiply it by the 20
21 states to come up with a \$500 million total defense cost --

22 A Correct.

23 Q -- assumption. Okay.

24 So the \$400 million that were the settlement value was an
25 assumption, right?

Mullin - Cross/Johnson

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1 A That was the direction from counsel, correct.

2 Q Okay. And then the \$500 million in defense costs was also
3 based on assumptions.

4 A It's an extrapolation from available data, so there's a
5 combination of some of it, you know, based on cases that had
6 some overlapping issues and trying to get a sense of a number
7 that it would very likely cost less than.

8 Q Okay. So that extrapolation was based, number one, on the
9 assumption that the cost to defend a consumer protection claim
10 would be a little higher than the highest cost, was five times
11 higher than the current average cost that J&J incurs in
12 defending a personal injury claim, right.

13 A That's how I modeled it, correct.

14 Q And then it was also based on the assumption that it would
15 be 20 states or government units defending?

16 A That there would be no more than 20 states.

17 Q No more than that, correct?

18 A Correct.

19 Q All right.

20 MS. JOHNSON: No further questions, Your Honor.

21 THE COURT: Thank you.

22 Let me have, what's your pleasure?

23 MR. JONES: Your Honor, the proposal is, I have very
24 few questions that will take less than five minutes, and on our
25 end, we'll be done.

Mullin - Redirect/Jones

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1 THE COURT: All right.

2 MR. JONES: That's --

3 THE COURT: Otherwise, I have to take a break. So --

4 MR. JONES: I'll go that fast, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. JONES:

7 Q Dr. Mullin, just a very few questions in follow-up.

8 You are aware that MDL courts, including the MDL court
9 sitting in this district that is handling the talc litigation,
10 can, at their pleasure, remand cases to trial in other
11 jurisdictions, or the jurisdictions in which the cases were
12 originally filed. Are you aware of that?

13 A There is the ability to remand cases, yes.

14 Q And those states, rather, those federal district courts
15 could sit in any state. Is that fair?

16 A Correct.

17 Q To which a case can be remanded?

18 A Correct.

19 Q And as I'm hearing the examination that we just heard, are
20 you aware of any member of the plaintiff's bar or any group of
21 plaintiff's lawyers in the talc litigation who have offered to
22 limit the number of trials they would request upon remand?

23 A I'm not aware of that.

24 Q And are you aware that counsel who cross-examined you,
25 Mr. Maimon, has indeed asked the New Jersey asbestos forum

Mullin - Redirect/Jones

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1 judge to bring in more judges to try cases?

2 MR. MAIMON: I'll stipulate to that.

3 MR. JONES: Thank you.

4 BY MR. JONES:

5 Q And have you also become aware that his firm has asked
6 judges to consolidate up to 22 plaintiffs in a single case?

7 MR. MAIMON: I'll stipulate to that, too.

8 MR. JONES: Thank you.

9 BY MR. JONES:

10 Q And speaking of consolidated trials, have you ever known a
11 talc defendant to advocate for consolidated trials?

12 A On the defendant's side?

13 Q On the defendant's side.

14 A I'm not aware of one.

15 Q And consolidating trials, Dr. Mullin, does that mean there
16 will be fewer trials in any given year?

17 A It could, but it doesn't necessarily mean that.

18 Q And you're aware of the backlog of trials, or the backlog
19 of cases that have been stayed in this litigation that may go
20 forward to trial, fair?

21 A Yes.

22 Q And are you aware of any impact consolidated trials as an
23 economic matter have on outcomes and the likelihood of
24 outcomes?

25 MR. MAIMON: Objection. Speculative. Not qualified.

Mullin - Redirect/Jones

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1 THE COURT: Overruled.

2 THE WITNESS: There is a literature that looks at
3 that question. I think Professor Ingall (phonetic) at CalTech
4 studies that topic. I think I cited some of his work. But
5 that literature in general shows that when you consolidate
6 trials, the likelihood of a plaintiff verdict rises and
7 conditional (indiscernible) plaintiff verdict, the damages on
8 average that get awarded also rise.

9 MR. JONES: That's all I have, Your Honor.

10 Thank you.

11 THE COURT: All right.

12 MR. WINOGRAD: Your Honor, I have equally very, very
13 short, if it's okay.

14 THE COURT: Based on the redirect?

15 MR. WINOGRAD: Yes, Your Honor. And just one or two
16 things to clarify based on testimony that's come out. it's --

17 THE COURT: No, just based on the redirect.

18 MR. WINOGRAD: Well, Your Honor, he discussed values
19 and I'd just like to clarify something with respect to values.

20 MR. JONES: I discussed consolidated trials, Your
21 Honor.

22 MR. WINOGRAD: Your Honor, I tried to keep it very
23 narrow the first time and address only what had come up. And
24 this would be literally just one topic for less than 90
25 seconds.

Mullin - Recross/Winograd

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1 THE COURT: I'm not going to let you go beyond 90
2 seconds. Go ahead.

3 MR. WINOGRAD: Well, I promise, Your Honor.

4 Your Honor, Michael Winograd on behalf Brown Rudnick
5 on behalf of the TCC. I just have a very few questions.

6 RECROSS EXAMINATION

7 BY MR. WINOGRAD:

8 Q Dr. Mullin, we've talked about the values, the 11 to \$21
9 billion high and stress range over the long term, the 3 to 7
10 billion estimation with respect to the first three years,
11 correct?

12 A Yes.

13 Q And I just want to clear up one thing. That analysis
14 accounts for any potential Imerys indemnification obligations,
15 correct?

16 A Correct.

17 Q Okay.

18 MR. WINOGRAD: Thank you, Your Honor.

19 THE COURT: Very good.

20 Even less than the 90 seconds.

21 MR. WINOGRAD: I did my best.

22 THE COURT: I assume we're done.

23 MR. JONES: We are from this end.

24 THE COURT: Thank you, Dr. Mullin.

25 THE WITNESS: Thank you.

1 THE COURT: I appreciate your time today.

2 So what's our expectations now? We have Dr. Bell,
3 but it's a quarter after 5:00. We have four and a half hours
4 roughly of closing tomorrow. We should be able to accomplish
5 both tomorrow?

6 MR. JONAS: Excuse me, Your Honor --

7 THE COURT: Yes.

8 MR. JONAS: May I ask one question?

9 (Counsel confer off record)

10 MR. JONAS: We'll try again, Your Honor.

11 (Counsel confer off record)

12 MR. JONAS: Your Honor, if the answer is yes, then
13 I --

14 THE COURT: I'm anticipating.

15 MR. JONAS: Yeah. And then I assume we could just,
16 unless there's anything else, what I would recommend is in the
17 morning -- tonight, we'll work just to get the exhibit list
18 together.

19 THE COURT: Right.

20 MR. JONAS: We could just submit that and then go
21 right to closings.

22 THE COURT: That's fine. I'll give a ruling on the
23 objections to Dr. Mullin's report --

24 MR. JONAS: Thank you, Your Honor.

25 THE COURT: -- in the morning.

1 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

2 (Counsel confer off record)

3 MR. JONES: So I understand we have an agreement,
4 Your Honor, and we'll call Dr. Bell. He will be introduced,
5 his reports will be proffered, and I think we will be done for
6 the day.

7 THE COURT: Do we have to even do that? Can we just
8 stipulate it?

9 MR. JONES: We can stipulate, Your Honor.

10 THE COURT: Thank you. I mean, I don't need the
11 charade.

12 (Laughter)

13 UNIDENTIFIED SPEAKER: But Dr. Bell came.

14 THE COURT: My apologies for Dr. Bell.

15 All right. Well, Dr. Bell, I appreciate your bearing
16 through all this. I appreciate the professionalism of counsel
17 in agreeing. So that leaves us for closing tomorrow and the
18 evidentiary issues.

19 Do you want more time? I mean, what I said I'm
20 participating in a seminar from 10:00 to 12:00 to 1:15. So we
21 have before that and then we have after that to finish the
22 closings. Do you need more time to go over the evidentiary
23 issues in the morning or do you want to start at 9:00?

24 That's what I'm getting at. Do you want to start at
25 9:00?

1 MR. JONAS: I don't believe so, Your Honor. I don't
2 believe so. I think we could start --

3 THE COURT: All right.

4 MR. JONAS: Start with closings at 9:00 and then deal
5 with the evidence.

6 THE COURT: I have one question. I don't necessarily
7 need an answer unless it's obvious and you can say so.

8 We've missed Mr. Satterley here these days because
9 he's been trying the Valadez case in California. To the
10 extent, and they're close to, I think probably winding up. To
11 the extent that the decision comes down and it's \$0 or \$500
12 million -- I'm just picking a number -- will that have any
13 bearing on this going forward and arguments?

14 UNIDENTIFIED SPEAKER: Just logistically, Your Honor,
15 I can tell I have contact with Mr. Satterley. They're
16 expecting to close evidence today. They're expecting for Judge
17 Seabolt to charge the jury today, and then they're breaking
18 until July 10th to have closing arguments.

19 THE COURT: Well, I guess then it's not going to
20 be -- what I wanted to avoid is arguments in the future about
21 whether it's going to be included in supplemental submissions
22 to the Court. It doesn't seem to me that that's going to
23 happen. Then that makes it easier. If anybody thinks
24 otherwise, we'll discuss it.

25 MR. MAIMON: Thank you, Your Honor.

1 MULTIPLE PERSONS: Thank you, Your Honor.

2 THE COURT: All right. Well, then thank you all and
3 we're adjourned.

4 (Proceedings concluded at 5:17 p.m.)

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C E R T I F I C A T I O N

We, LINDA SCHERZINGER, ROBYN SCHLEY, JUNE KAUFMAN,
and KAREN K. WATSON, court approved transcribers, certify that
the foregoing is a correct transcript from the official
electronic sound recording of the proceedings in the above-
entitled matter, and to the best of our ability.

/s/ Linda Scherzinger

LINDA SCHERZINGER

/s/ Robyn Schley

ROBYN SCHLEY

/s/ June Kaufman

JUNE KAUFMAN

/s/ Karen K. Watson

KAREN K. WATSON

J&J COURT TRANSCRIBERS, INC. DATE: June 30, 2023